



# California Regulatory Notice Register

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APRIL 6, 2007

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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## PROPOSED ACTION ON REGULATIONS

*Information contained in this document is published as received from agencies and is not edited by Thomson West.*

### TITLE 2. DEPARTMENT OF GENERAL SERVICES

#### NOTICE OF PROPOSED RULEMAKING

The Department of General Services (DGS) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

#### PROPOSED REGULATORY ACTION

The DGS proposes to adopt the California Code of Regulations, title 2, division 2, chapter 3, subchapter 10.6. Subchapter 10.6 creates the DVBE incentive program.

#### PUBLIC HEARING

DGS will hold a public hearing on the proposed amendments:

May 25, 2007  
Starting at 10:00 a.m.  
Department of General Services  
Auditorium, 1<sup>st</sup> floor  
707 3<sup>rd</sup> Street  
West Sacramento

If you have a disability and require assistance to participate in this hearing, please contact Melodie Cato at (916) 375-4935. This location is wheelchair accessible.

At the hearing, any person may present written or oral comments relevant to the proposed action described in the Informative Digest.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the DGS. The written comment period closes at 5:00 p.m. on May 25, 2007. The DGS will consider only comments received at the DGS office by that time. Submit comments to:

Office of Small Business and Disabled Veteran  
Business Enterprise Services, Attention: Melodie Cato  
Procurement Division, DGS  
707 3<sup>rd</sup> Street, 1<sup>st</sup> floor, Room 400  
Sacramento, CA, 95605  
E-mail to [melodie.cato@dgs.ca.gov](mailto:melodie.cato@dgs.ca.gov).

#### AUTHORITY AND REFERENCES

Military and Veterans Code section 999.5 subdivision (d) authorized the DGS to adopt the proposed regulations, which would implement, interpret or make specific section 999.5 subdivision (a) of the Military and Veterans Code.

#### INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

The DGS proposes to adopt subchapter 10.6 to create a Disabled Veteran Business Enterprise (DVBE) incentive program for use by all State agencies when awarding contracts. The purpose of the proposed regulations is to establish an incentive to ensure that departments meet their mandated 3 percent DVBE participation goal set forth in Public Contract Code section 10115, subdivision (c). This is accomplished by requiring departments to provide an incentive to bidders proposing DVBE participation, thereby increasing the likelihood of contract award to a contractor using DVBE. The amount of the incentive is 1 percent, but may be increased if needed to meet the DVBE participation goal. A higher incentive is allowed to increase the likelihood of securing DVBE contractors or subcontractors.

Section 1896.99.120 establishes the incentive amount as 1 percent, or if needed to meet DVBE participation goals, a higher percentage not to exceed 5 percent may be applied.

Section 1896.99.100 subdivision (a) through (d) establishes how the incentive will be applied. These requirements are as follows: (1) identification of the incentive amount in the solicitation, (2) application only to responsive bids from responsible bidders proposing the minimum required participation, (3) calculation of the incentive by reducing the bid price by the amount of the incentive times the lowest responsive and responsible bid for low price solicitations, (4) calculation of the incentive by increasing the bidder's score by the incentive amount is included in the sum of non-cost points, and (5) incentive points cannot be used to meet any required minimum points. Additional non-mandatory features include the following: (1) departments that have met or exceeded the DVBE 3 percent goal for 2 out of the previous 3 years may exempt contracts from the DVBE incentive, and (2) solicitations may provide an incentive scale that provides more incentive tied to

more DVBE participation. Section 1896.99.100 subdivision (c) prohibits a non-small business from displacing a small business due to the DVBE incentive.

### DISCLOSURES REGARDING THE PROPOSED ACTION

The DGS has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any State agency: Total cost to the State for the DVBE incentive is thought to be minimal. However, information is not available to make an estimate. The DGS expects to collect information in the first year in order to track the benefit and estimate future years' costs.
- Cost to any local agency or school district, which must be reimbursed in accordance with Government Code section 17561: None.
- Other non-discretionary cost or savings imposed upon local agencies: None.
- Cost or savings in federal funding to the State: None.
- Significant Statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: The requirement that DVBEs receive an incentive in the contract evaluation process will have an adverse economic impact on those businesses that lose contract awards due to application of the incentive. This is an inherent consequence in the underlying legislation, which requires the incentive. The proposed regulation will have no effect on California businesses' ability to compete with businesses in other states. However, the proposed regulation could potentially shift jobs from a non-DVBE to a DVBE, because the intended result of the regulations is to increase the dollar amount of contracts awarded to DVBEs, which necessarily will decrease the dollar amount of contracts awarded to non-DVBEs. This could also lead to an increase in the number of DVBEs and a decrease in the number of non-DVBEs. It is not likely that an adjustment from non-DVBEs to DVBEs will result in job shifts or the creation and/or elimination of existing businesses within California. It should expand DVBEs. Overall, the proposed regulation should not have a significant adverse economic impact on business. Rather, it should result in the shifting of State funds from one type of business to another. There is also a minor

additional cost to non-DVBEs to recruit DVBEs for subcontracting.

- Cost impact on representative private person or directly affected businesses: Minor impact on individuals and businesses that are or are not chosen for the State business due to the DVBE incentive. The Department is not aware of any other cost.
- Creation or elimination of jobs within California: None or very minor shift due to a DVBE business receiving State work that would have gone to a non-DVBE.
- Creation of new business or eliminate existing businesses within California: A very small number of businesses may be created or eliminated based upon winning State contracts.
- Expansion of businesses currently doing business within California: Minimal. DVBEs may decide to locate in California and go after State business using the DVBE incentive.
- Significant effect on housing costs: None.

### BUSINESS REPORTING REQUIREMENT

The proposed regulations do not have any reporting requirement for businesses.

### PLAIN ENGLISH AND SMALL BUSINESS DETERMINATION AND OVERVIEW

#### Small Business Determination

The proposed regulations minimally affect small business. A minimal number of small businesses that are also DVBEs may receive State business that may have gone to a small business that was not also a DVBE. Advertising for and communicating with DVBEs to partner or subcontract for a State bid might also be a slight economic cost to small business.

#### Plain English Policy Overview

The proposed regulations provide a DVBE incentive process. The DVBE incentive is only applied for bidders proposing DVBE participation as required for departments awarding contracts. The DVBE incentive percentage is 1 percent. Use of a higher percentage(s) is allowed. This percentage(s) shall not exceed 5 percent. The higher percentage(s) is allowed based on need to meet participation goals. For awards based on low price, the bid is evaluated by subtracting a computed amount from the bid price. The computed amount is the incentive times the lowest responsive and responsible bidder's price. This subtraction of price is for evaluation purposes only. For awards based on highest score, the bidder's score is increased by the incentive points. The incentive points are described in each solicitation.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the DGS must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the DGS would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The DGS invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

## CONTACT PERSON

Inquiries concerning the proposed regulatory action may be directed to:

Melodie Cato, Regulations Contact  
Office of Small Business and Disabled Veteran  
Business Enterprise Services  
(OSDS), Procurement Division  
Department of General Services  
707 3<sup>rd</sup> Street, 1<sup>st</sup> floor, Room 400  
West Sacramento, CA 95605  
(916) 375-4935  
E-mail: [Melodie.Cato@dgs.ca.gov](mailto:Melodie.Cato@dgs.ca.gov)

Backup person for these inquiries is:

Gloria Anderson, Manager  
OSDS, External Operations Branch, Procurement  
Division  
Department of General Services  
707 3<sup>rd</sup> Street, 1<sup>st</sup> floor, Room 400  
West Sacramento, CA 95605  
(916) 375-4936  
E-mail: [gloria.anderson@dgs.ca.gov](mailto:gloria.anderson@dgs.ca.gov)

## AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The DGS will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, the report titled "Disabled Veteran Business Enterprise Statewide Statistical Annual Report for Fiscal Year 04-05," and the report titled "Disabled Veteran Business Enterprise Program: Few Departments That Award Contracts Have Met the Potentially Unreasonable Participation Goal, and Weak Implementation of the Program Further Hampers Success." Copies may be

obtained by contacting Melodie Cato at the address, phone number, or email listed above. Copies may be also viewed and downloaded from the DGS Web site at <http://www.pd.dgs.ca.gov/smbus/default.htm>

## AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the DGS may adopt the proposed regulations substantially as described in this notice. If the DGS makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text with the changes clearly indicated available to the public for at least 15 days before the DGS adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Melodie Cato at the address indicated above. The DGS will accept written comments on the modified regulations for 15 days after the date on which they are made available.

## AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Cato at the address, phone number, or email listed previously in this Notice.

## TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

## CONFLICT OF INTEREST CODES

### ADOPTION

STATE AGENCY: Mendocino Winegrape and  
Wine Commission  
Sonoma County District 3 Local  
Winegrape Commission

### AMENDMENT

MULTI-COUNTY: Kern Water Bank Authority  
Sierra Charter School

A written comment period has been established commencing on **April 6, 2007**, and closing on **May 21,**



**2007.** Written comments should be directed to the Fair Political Practices Commission, Attention **Ashley Clarke**, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director or the Commission will review the above-referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than **May 21, 2007**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

#### COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

#### EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

#### AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as

the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

#### REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

#### CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to **Ashley Clarke**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

#### AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to **Ashley Clarke**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

### TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture adopted Section 3591.20 and subsections (a),(b), (c) and (d) of the regulations in Title 3 of the California Code of Regulations pertaining to Light Brown Apple Moth Eradication Area as an emergency action that was effective on March 21, 2007. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than September 19, 2007.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before May 21, 2007.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this state and determine the probability of its spread, and the feasibility of its control or eradication (Food and Agricultural Code Section 5321).

Existing law also provides that the Secretary may establish, maintain, and enforce quarantine, eradication, and other such regulations as he deems necessary to protect the agricultural industry from the introduction and spread of pests (Food and Agricultural Code, Sections 401, 403, 407 and 5322). Existing law also provides that eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, its hosts, and the methods to be used to eradicate said pest (Food and Agricultural Code Section 5761).

The adoption of 3591.20 and subsections (a), (b), (c) and (d) established Alameda and Contra Costa counties as eradication areas for the light brown apple moth, *Epiphyas postvittana*, hosts, possible carriers and means and methods that may be used within the eradication areas to eradicate or control light brown apple moth, *Epiphyas postvittana*. The effect of this action was to establish authority for the State to conduct eradication activities in Alameda and Contra Costa counties against this pest. There is no existing, comparable federal regulation or statute.

#### COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department of Food and Agriculture has determined that the adoption of Section 3591.20 does not impose a mandate on local agencies or school districts and no reimbursement is required for Section 3591.20 under Section 17561 of the Government Code. The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

#### EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed actions will not affect housing costs.

#### EFFECT ON BUSINESSES

The Department has made an initial determination that the proposed actions will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

#### COST IMPACT ON AFFECTED PRIVATE PERSON OR BUSINESSES

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### ASSESSMENT

The Department has made an assessment that the proposed adoption of the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

#### ALTERNATIVES CONSIDERED

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

#### AUTHORITY

The Department proposes to adopt Section 3591.20, subsections (a), (b), (c) and (d) pursuant to the authority vested by Sections 407 and 5322 of the Food and Agricultural Code.

#### REFERENCE

The Department proposes to amend Section 3591.20, subsections (a), (b), (c) and (d), to implement, interpret and make specific Sections 407, 5322, 5761, 5762 and 5763 of the Food and Agricultural Code.

**EFFECT ON SMALL BUSINESS**

The proposed adoption of this regulation may affect small businesses.

**CONTACT**

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed to is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Liz Johnson at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

**INTERNET ACCESS**

The Department has posted the information regarding this proposed regulatory action on its Internet website ([www.cdfa.ca.gov/cdfa.pendingregs](http://www.cdfa.ca.gov/cdfa.pendingregs)).

**AVAILABILITY OF STATEMENT OF REASONS  
AND TEXT OF PROPOSED REGULATIONS**

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed actions, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations adopted by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

**TITLE 4. CALIFORNIA SCHOOL  
FINANCE AUTHORITY**

**NOTICE OF PROPOSED RULEMAKING  
ACTION**

**Article 1.5, Sections 10165 to 10170  
Title 4, Division 15  
California Code of Regulations**

NOTICE IS HEREBY GIVEN that the California School Finance Authority (Authority), organized and operating pursuant to Sections 17170 through 17199.5 of the Education Code, proposes to adopt the proposed regulations described below after considering all comments, objections and recommendations regarding the proposed action.

Any person interested may present statements or arguments relevant to the proposed action to the attention of the Contact Person as listed in this Notice no later than 5:00 p.m. on Monday, May 21, 2007. The Authority Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person(s) designated in this notice as Contact Person and will be mailed to those persons who submit statements related to this proposal or who have requested notification of any changes to the proposal.

**Proposed Regulatory Action**

The Authority proposes to adopt Sections 10165 to 10170 of Title 4 of the California Code of Regulations (Regulations). The Regulations implement the Authority's responsibilities related to the Charter School Working Capital Program (Program).

**Authority and Reference**

Authority: Sections 17179 and 17180, Education Code. Section 17179 provides the Authority with the power to do all things reasonably necessary to carry out its responsibilities. Section 17180(a) of the Education Code authorizes the Authority to adopt bylaws for the regulation of its affairs and the conduct of its business.

Reference: Sections 17078.52, 17173, 17179, 17180, 17183, 47605, and 47612.5 of the Education Code. These Regulations implement the Charter School Working Capital Program and include a number of the



requirements of that program contained in the reference code provisions and their implementing Regulations. They also rely on a number of provisions in the Charter Schools Act of 1992, commencing with section 47600 of the Education Code.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Authority was created in 1985 to provide tax-exempt, low cost financing to school districts and community college districts for use in the repair and construction of school facilities as well as provide financing for working capital purposes. At the time the Authority's statute was created, charter schools did not exist and therefore were not listed in the definition of entities able to access financing through the Authority. Since the passage of the Charter School Act of 1992, charter schools have become a viable option for those seeking choice in education, and as of the 2006-07 school year, approximately 600 charter schools serve over 180,000 California public school students. With the passage of Assembly Bill 2717 (Statutes of 2006, Walters), the term "charter school" has been added to the Authority's statutory definition of participating party, allowing charter schools to access financing through the Authority. Effective January 1, 2007, the Authority may serve as a conduit issuer, and issue debt on behalf of charter schools. Debt issued on behalf of a borrower through the Authority is not deemed to constitute a debt or a liability of the Authority, the State, or any political subdivision thereof.

Education Code section 17171 provides that the Authority may serve as a conduit issuer and issue debt on behalf of charter schools. Education Code section 17180 authorizes the Authority Board to adopt bylaws for the regulation of its affairs. The Authority proposes to adopt sections 10165 through 10170 in title 4 of the California Code of Regulations (CCR). These sections concern the Authority's administration of a financing program for charter schools.

Section 10165 states that the purpose of the Article is to implement the Charter School Working Capital Program to provide financing to California charter schools.

Section 10166 defines the meaning of the words and phrases used in the article.

Section 10167 provides the eligibility criteria that must be met before an applicant may apply for financing through the Authority.

Section 10168 describes the areas of evaluation that may be used in evaluating an application for financing.

Section 10169 identifies the materials to be submitted at the time of application for financing.

Section 10170 sets out the fees that shall be charged for reasonable and necessary administrative and program expenses, including but not limited to an application fee, an Authority fee, and a transaction fee.

## DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on Local Agencies or School Districts: None

Cost or savings to any State agency: None

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None

Other nondiscretionary cost or savings imposed on local agencies: None

Cost or savings in federal funding to the State: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None

Cost impacts on a representative private person or business: The Authority is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

- 1) create or eliminate jobs within California;
- 2) create new businesses or eliminate existing businesses within California; or
- 3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None

Small Business Determination: The Authority has determined that the adoption of the Regulations will not affect small business. The program is a voluntary financing program available to charter schools to assist in the financing of charter school facilities and working capital needs.

Other matters prescribed by statutes applicable to the Authority or to any specific regulation or class of regulations pursuant to section 11346.5(a)(4) of the Government Code: None

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), The Authority must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the Regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

### **Written Comment Period**

The Authority invites interested persons to present statements with respect to alternatives to the Regulations during the written comment period.

Any interested person, or his or her authorized representative, may submit written comments relevant to the Regulations to the Authority. The written comment period will close at **5:00 p.m. on May 21, 2007**. All comments to be considered by the Authority must be submitted in writing to the Agency Contact Person identified in this Notice by that time. In the event that changes are made to the Regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified Regulations for 15 calendar days after the date on which such Regulations as changed or modified, are made available to the public pursuant to title 1, Chapter 1, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency Contact Person identified in this Notice.

### **Agency Contact Person(s)**

Written comments, inquiries, and any questions regarding the substance of the Regulations shall be submitted or directed to:

Katrina Johantgen, Executive Director  
California School Finance Authority  
[csfa@treasurer.ca.gov](mailto:csfa@treasurer.ca.gov)

or

304 South Broadway, Suite 550  
Los Angeles, CA 90013-1224

or

915 Capitol Mall, Room 576  
Sacramento, CA 95814

The following person is designated as a backup contact person for inquiries only regarding the Regulations:

Kristin Smith, Staff Counsel  
State Treasurer's Office  
(916) 653-2971

### **Availability of Initial Statement of Reasons, Rulemaking File and Express Terms of Proposed Regulations**

Pursuant to the California Government Code, the Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 915 Capitol Mall, Sacramento, California, during normal business hours. As of the date this Notice is

published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons, and the proposed text of the Regulations. Copies of these items are available upon request from the Agency Contact Person designated in this Notice. The Sacramento address will also be the location for inspection of the rulemaking file and any other public records, including reports, documentation and other materials related to this proposed regulatory action. In addition, the rulemaking file, including the Notice, the Initial Statement of Reasons and the proposed text, may be viewed on the Authority's Web site at [www.treasurer.ca.gov/csfa](http://www.treasurer.ca.gov/csfa).

### **Public Hearing**

No public hearing regarding the Regulations has been scheduled. Anyone wishing that a public hearing be scheduled must submit a request in writing, pursuant to Section 11346.8 of the Government Code, addressed to the Agency Contact Person identified in this Notice and should specify the Regulations for which the hearing is being requested. Such request must be received no later than 15 days before the close of the written comment period.

### **15-Day Availability of Changed or Modified Text**

After the written comment period ends and following a public hearing, if any is requested, the Authority may adopt the Regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public (including through the Authority's Web site described above) for at least fifteen (15) calendar days before the Authority adopts the proposed Regulations, as modified. Inquiries about and requests for written copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice.

### **Availability of Final Statement of Reasons**

The Authority is required to prepare a Final Statement of Reasons pursuant to Government Code section 11346.9. Once the Authority has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy and will be available on the Authority's Web site described above. Written requests for copies should be addressed to the Agency Contact Person identified in this Notice.

## TITLE 13. CALIFORNIA AIR RESOURCES BOARD

### NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF A PROPOSED REGULATION FOR IN-USE OFF-ROAD DIESEL VEHICLES

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider adopting a regulation to reduce emissions of diesel particulate matter (diesel PM) and oxides of nitrogen (NOx) from in-use off-road diesel vehicles that operate in California. This notice summarizes the proposed regulation. The staff report and technical support document present the regulation and information supporting the adoption of the regulation in greater detail.

DATE: May 24, 2007

TIME: 9:00 a.m.

PLACE: San Diego Marriot Del Mar  
Grand Ballroom  
11966 El Camino Real  
San Diego, CA 92130

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., May 24, 2007 and will adjourn at 6:00 p.m. The meeting will then continue at 8:00 a.m., May 25, 2007. This item may not be considered until May 25, 2007. Please consult the agenda for the meeting, which will be available at least 10 days before May 24, 2007, to determine the day on which this item will be considered.

For individuals with sensory disabilities, this document is available in Braille, large print, audiocassette or computer disk. Please contact ARB's Disability Coordinator at 916-323-4916 by voice or through the California Relay Services at 711, to place your request for disability services. If you are a person with limited English and would like to request interpreter services, please contact ARB's Bilingual Manager at 916-323-7053.

### INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

#### **Sections Affected:**

Proposed adoption of new section 2449, title 13, California Code of Regulations (CCR).

#### **Background:**

Over 90 percent of Californians breathe unhealthful air at times. To improve air quality and human health, ARB establishes requirements to reduce emissions from new and in-use motor vehicles and engines, as well as other sources. To reduce emissions from off-

road vehicles, ARB has adopted a series of regulations since 1992 requiring that new 1996 and subsequent model year off-road compression-ignition (diesel) engines comply with increasingly stringent emission standards. The United States Environmental Protection Agency (U.S. EPA) has established similar regulations for new off-road engines in the same time frame. On December 9, 2004, the Board adopted a fourth phase of emission standards (Tier 4) that are nearly identical to those finalized by U.S. EPA on May 11, 2004, in its Nonroad Diesel Rule.<sup>1</sup> Engine manufacturers are now required to meet aftertreatment-based exhaust standards for particulate matter and NOx starting in 2011 that are at least 90 percent more stringent than current levels, putting off-road engines on a virtual emissions par with on-road heavy-duty diesel engines. However, significant opportunities exist to further reduce emissions from the nearly 180,000 in-use off-road vehicles that operate in the State.

#### *Control of Toxic Air Contaminants*

California's Air Toxics Program, established under California law by Assembly Bill 1807 (Stats. 1983, Ch. 1047) and set forth in Health and Safety Code (HSC) sections 39650 through 39675, mandates the identification and control of air toxics in California. The identification phase of the Air Toxics Program requires ARB, with the participation of other state agencies, such as the Office of Environmental Health Hazard Assessment, to evaluate the health impacts of, and exposure to, substances and to identify those substances that pose the greatest health threat as toxic air contaminants (TACs). The ARB's evaluation is made available to the public and is formally reviewed by the Scientific Review Panel (SRP) established under HSC section 39670. Following the ARB's evaluation and the SRP's review, the Board may formally identify a TAC at a public hearing. Following identification, HSC sections 39658, 39665, 39666, and 39667 require ARB, with the participation of the air pollution control and air quality management districts (districts), and in consultation with affected sources and interested parties, to prepare a report on the need and appropriate degree of regulation for that substance and to adopt airborne toxic control measures (ATCMs).

In 1998, the Board identified diesel PM as a TAC with no Board-specified threshold exposure level. A needs assessment for diesel PM was conducted between 1998 and 2000, which resulted in ARB staff developing and the Board approving a Risk Reduction Plan to Reduce

<sup>1</sup> ARB's emission standards for new off-road compression ignition engines are codified at title 13, CCR, sections 2420-2427. U.S. EPA's final Nonroad Diesel Rule is set forth at 69 FR 38958 (June 29, 2004). The California term "off-road" and the federal term "nonroad" refer to the same sources and are used interchangeably.



Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles (Diesel RRP) in 2000. The Diesel RRP presented information that identified the available options for reducing diesel PM and recommended regulations to achieve further reductions. The scope of the Diesel RRP was broad, addressing all categories of engines, both mobile and stationary, and included control measures for private and public fleets of off-road diesel vehicles, such as those covered by the proposed regulation. The ultimate goal of the Diesel RRP is to reduce California's diesel PM emissions and associated cancer risks from 2000 baseline levels by 85 percent by 2020.

#### *Attainment of Ambient Air Quality Standards*

The federal Clean Air Act (CAA) requires U.S. EPA to establish National Ambient Air Quality Standards (Standards) for pollutants considered harmful to public health, including fine particulate matter (PM<sub>2.5</sub>) and ozone. Set to protect public health, the Standards are adopted based on a review of health studies by experts and a public process. Ambient PM<sub>2.5</sub> is associated with premature mortality, aggravation of respiratory and cardiovascular disease, asthma exacerbation, chronic and acute bronchitis and reductions in lung function. Ozone is a powerful oxidant. Exposure to ozone can result in reduced lung function, increased respiratory symptoms, increased airway hyper-reactivity, and increased airway inflammation. Exposure to ozone is also associated with premature death, hospitalization for cardiopulmonary causes, and emergency room visits for asthma.

Areas in the State that exceed the Standards are required by federal law to develop State Implementation Plans (SIPs) describing how they will attain the standards by certain deadlines. NO<sub>x</sub> emission reductions are needed because NO<sub>x</sub> leads to formation in the atmosphere of both ozone and PM<sub>2.5</sub>; diesel PM emission reductions are needed because diesel PM contributes to ambient concentrations of PM<sub>2.5</sub>. The South Coast and San Joaquin Valley air basins are both required to attain the PM<sub>2.5</sub> standard by 2015. The U.S. EPA further requires that all necessary emission reductions be achieved one calendar year sooner — by 2014 — in recognition of the annual average form of the standard. By contrast, San Joaquin Valley and South Coast air basins are expected to have until 2023 to attain the federal ozone standard, by invoking the “bump-up” provision in the CAA.

The ozone and PM<sub>2.5</sub> SIPs are due to the U.S. EPA by June 2007 and April 2008, respectively. Air quality modeling indicates that significant reductions of NO<sub>x</sub> are crucial to help meet both these standards. At this time, staff estimates that a 60 percent reduction in NO<sub>x</sub> emissions from 2006 levels (i.e., a total reduction of hundreds of tons per day) and a 12 percent reduction in

direct PM<sub>2.5</sub> emissions will be necessary for attainment of the PM<sub>2.5</sub> standards in the South Coast Air Basin. Emission reduction targets have not yet been set for achieving the PM<sub>2.5</sub> standard in the San Joaquin Valley Air Basin, but are expected to be significantly lower.

While all sources of NO<sub>x</sub> emissions are important, off-road diesel vehicles are one of four major categories that will determine whether California is able to meet the 2014 deadline for PM<sub>2.5</sub> attainment in the South Coast Air Basin. The remaining emission source categories with the most impact on California's attainment prospects are in-use on-road heavy-duty diesel vehicles, line-haul locomotives, and marine vessels.

#### *Authority*

ARB has authority under California law to adopt the proposed regulation. HSC sections 43000, 43000.5, 43013(b) and 43018 provide broad authority for ARB to adopt emission standards and other regulations to reduce emissions from new and in-use vehicular and other mobile sources. Under HSC sections 43013(b) and 43018, ARB is directly authorized to adopt emission standards for off-road vehicular sources, as expeditiously as possible, to meet state ambient air quality standards. ARB is further mandated by California law under HSC section 39667 to adopt ATCMs for new and in-use vehicular sources, including off-road diesel vehicles, for identified TACs, such as diesel PM.

#### *Emission Reductions and Public Health Benefits Projected*

The regulation is expected to significantly reduce emissions of diesel PM from in-use off-road diesel vehicles. Diesel PM emission reductions are needed to reduce premature mortality, cancer risk, and other adverse impacts from exposure to this TAC. The regulation would achieve the 2020 goal set forth in the 2000 Diesel RRP of reducing diesel PM by 85 percent from 2000 baseline levels. Staff projects that the regulation would reduce in-use off-road vehicle diesel PM emissions from the 2000 baseline by 37 percent in 2010 and 92 percent in 2020.

The regulation would also reduce diesel PM and NO<sub>x</sub> emissions that contribute to exceedances throughout the State of ambient air quality standards for both PM<sub>2.5</sub> and ozone. In 2020, the rule is expected to reduce diesel PM emissions by 5.2 tons per day and NO<sub>x</sub> emissions by about 48 tons per day statewide, which represents a 74 percent reduction in diesel PM and a 32 percent reduction in NO<sub>x</sub> from emission levels anticipated in the absence of the rule.

The emission reductions from the regulation are expected to prevent approximately 4,000 premature deaths over the course of the regulation (1,100 to 6,800, 95% confidence interval).



Although some actions required by the rule would result in a fuel economy penalty, slightly increasing carbon dioxide (CO<sub>2</sub>) greenhouse gas emissions, other actions required by the rule would reduce idling, increase the use of electric vehicles, and reduce emissions of black carbon (a likely contributor to global warming), and are expected to offset any fuel penalty effect. On the whole, staff expects the rule to have a negligible effect on global warming.

While the public health benefits of this rule are substantial, as noted above, the proposed rule is currently not sufficient to demonstrate full attainment of the federal PM<sub>2.5</sub> standard by 2014. As a consequence, the Board may consider whether the proposal can be strengthened — either at the May 25–26 public hearing or at a subsequent meeting.

#### *Comparable Federal Regulations*

As noted above, U.S. EPA has promulgated federal emission standards for new nonroad engines. Presently, no federal standards have been promulgated addressing emission reductions from in–use diesel vehicle engines. Under CAA section 213, U.S. EPA is without authority to adopt in–use standards for nonroad engines. California is the only governmental entity in the United States authorized by the CAA, in the first instance, to adopt emission requirements for in–use off–road engines.<sup>2</sup>

While CAA section 209(e)(1) conclusively preempts states, including California, from adopting requirements for new off–road engines less than 175 horsepower that are used in farm or construction equipment, the proposed regulation addresses in–use rather than new off–road engines. Under section 209(e)(2), California may adopt and enforce emission standards and other requirements for off–road engines and equipment not conclusively preempted by section 209(e)(1), so long as California applies for and receives authorization from the Administrator of U.S. EPA. To obtain authorization, the Board must make a finding that the California adopted standards will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards.<sup>3</sup> The Administrator must grant a request for authorization from California unless he finds that ARB’s protectiveness finding is arbitrary and capricious, that California does not need the standards to meet compelling and extraordinary conditions, or that the standards and accompanying enforcement procedures are not consistent with CAA section 209.

#### *Staff Report and Further Information*

The ARB staff has prepared two separate documents, an Initial Statement of Reasons (Staff Report) for the proposed regulation and a Technical Support Document that, together with the needs assessment (i.e., the Diesel RRP), serve as the report on the need and appropriate degree of regulation for in–use off–road diesel vehicles.

#### **Description of the Proposed Regulatory Action**

##### *Applicability*

The fleet requirements of this regulation would apply to any person, business, or government agency that owns vehicles with affected engines in California. Affected engines include diesel–fueled engines with maximum power of 25 horsepower (hp) or greater that are used to provide motive power in a workover rig or to provide motive power in any other motor vehicle that (1) cannot be registered and driven safely on–road, and (2) is not an implement of husbandry or recreational off–highway vehicle. The proposed regulation only addresses engines that drive self–propelled vehicles (i.e., does not apply to stationary equipment or portable equipment like generators).

Industries such as construction, mining, landscaping, airlines, retail, wholesale, equipment rental, ski, oil and gas drilling, recycling, utilities, telephone and cable, and many others would be subject to the regulation. Government agencies engaged in road maintenance, park maintenance, and other activities that operate covered vehicles would also be affected.

The regulation contains different requirements for fleets of differing sizes. A fleet consists of one or more vehicles. Fleets are defined in the regulation as either small, medium, or large. Small fleets include: (1) fleets with total horsepower of less than or equal to 1,500 hp that are owned by a small business (as defined in Government Code section 11342.610) or by a governmental entity that is not a state or federal agency; and (2) all fleets of low population county local municipalities irrespective of total horsepower. Medium fleets are defined as those with total horsepower less than or equal to 5,000 hp that are not small fleets. Large fleets are defined as those with total horsepower greater than 5,000 hp. All state and federal agencies would be considered large fleets.

The proposed regulation also would impose requirements on sellers of new and in–use vehicles to disclose the regulation’s potential applicability to buyers of the vehicles.

##### *Fleet Requirements*

In general, the rule would require owners to modernize their fleets by replacing engines with newer, cleaner ones (repowering), replacing vehicles with newer vehicles equipped with cleaner engines, retiring older vehicles, operating higher emitting vehicles less often

<sup>2</sup> See *Engine Manufacturers Association v. U.S. EPA* (D.C. Cir. 1996) 88 F.3d 1075.

<sup>3</sup> CAA section 209(e)(2)(A). Other states may subsequently opt into the California program, but their regulations must be identical to California’s requirements. CAA section 209(e)(2)(B).

(designating them as low-use vehicles) and applying exhaust retrofits that capture and destroy pollutants before they are emitted into the atmosphere.

The rule would establish fleet average emission rate targets for both diesel PM and NOx. By the applicable compliance date each year, the rule would require each fleet to demonstrate either that it meets the fleet average emission rate target for diesel PM or that it has applied the highest level verified diesel emission control system (VDECS) to 20 percent of the total horsepower of its fleet in the past year. The highest level VDECS is only required if a system has been verified by ARB to be effective and durable for the engine on which it will be installed, and if the system can be used safely. The rule would not penalize fleets if an appropriate VDECS is not available for a given engine or vehicle. The ARB's verification program, previously adopted by the Board,<sup>4</sup> is intended to ensure that an emission control system for in-use diesel engines achieves the advertised emission reductions and has been evaluated for durability. Also, to receive ARB verification, the device manufacturer is required to warrant the VDECS and warrant against any engine damage caused by the device.

For NOx, the rule would also require large and medium fleets to demonstrate that they meet the fleet average emission rate target for NOx or to turn over a certain percent of the fleet's total horsepower by the applicable compliance date each year. Small fleets are exempt from this provision. The mandatory turnover rate until 2015 is eight percent per year. Then, after 2015, it is 10 percent per year. If retrofits that reduce NOx emissions become available, they may be used in lieu of turnover.

The targets decline over time, requiring fleets to reduce their emissions further as time goes on. As stated, to meet the diesel PM or NOx fleet averages, fleets may retrofit their vehicles' exhaust systems with verified emission control devices to reduce PM and/or NOx emissions, repower existing vehicles with cleaner engines, retire higher-emitting vehicles and/or replace them with newer, cleaner vehicles, or designate high-emitting vehicles as low-use vehicles. Under the regulation, vehicles designated as low-use would not be included in calculating the fleet average and are exempt from the retrofit, turnover and fleet average requirements.

Fleets would have the option of satisfying either the fleet average requirements or the mandatory retrofit and/or turnover requirements each year. Satisfying either would be an acceptable way to demonstrate compliance with the regulation.

Finally, the regulation would require that operators of off-road diesel vehicles shut down their vehicles rather

than operate them in idle mode for more than 5 minutes, unless such idling is necessary for the proper or safe operation of the vehicle.

#### *Labeling, Recordkeeping, and Reporting Requirements*

All fleet owners would be required to report their affected equipment and associated engine and retrofit data to ARB in 2009. Annually thereafter, fleets would need to report any changes made in the prior year. Fleet owners would also be required to label all affected equipment with a unique equipment identification number assigned by ARB. They would be required to keep records of all data reported, as well as any changes made since their last reporting, until 2030, or as long as the owner still owns the fleet.

#### *Schedule*

The reporting requirements would begin for all fleets subject to the regulation in 2009. The first fleet average targets would take effect in 2010 for the largest fleets and in 2013 for medium fleets. Small fleets would have until 2015 to comply with the PM retrofit or PM fleet average requirements.

#### *Exemptions, Compliance Extensions and Special Circumstances*

The regulation contains special, less strict provisions for all fleets in counties that currently are in attainment with the federal ambient air quality standards for ozone and particulate matter, as well as less strict provisions for public fleets in rural counties with low populations. The regulation would also exempt low-use vehicles (vehicles used less than 100 hours per year), emergency equipment, and vehicles used only to remove snow from public roads from all requirements but record keeping and reporting.

The following vehicles would be exempt from the mandatory turnover requirements:

- All vehicles in small fleets,
- Vehicles less than 10 years old,
- Specialty vehicles for which no used equipment or repowers are available,
- Vehicles retrofit with best available technology in the past 6 years, and
- Tier 4 and interim Tier 4 engines.

The following engines would be exempt from the retrofit requirements:

- Engines in vehicles less than 5 years old,
- Engines for which there is no retrofit available or for which a retrofit cannot be safely installed.
- New engines that come with a diesel particulate filter, and
- Engines already retrofit with the best available control at the time of installation.

The regulation would provide that fleet owners are subject to penalties for noncompliance consistent with

<sup>4</sup> Title 13, CCR, sections 2700–2710.

the penalty provisions set forth in the Health and Safety Code. However, fleet owners would not be liable for noncompliance caused by manufacturer delays in the availability of retrofits, repowers, or new engines needed for compliance with the regulation.

At the hearing, the Board may consider other elements that may provide additional flexibility to affected fleets.

#### AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board staff has prepared a Staff Report for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled, "Staff Report: Initial Statement of Reasons for the Proposed Rulemaking — Regulation for In-Use Off-road Diesel Vehicles."

Copies of the Staff Report and the full text of the proposed regulatory language may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990. They will be made available at least 45 days prior to the scheduled May 24, 2007 hearing.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the ARB's web site listed below.

Inquiries concerning the substance of the proposed regulations may be directed to the designated agency contact persons, Tony Brasil, Manager of the In-Use Control Measures Section, at (916) 323-2927, or by email at [abrasil@arb.ca.gov](mailto:abrasil@arb.ca.gov), or Kim Heroy-Rogalski, Staff Air Pollution Specialist, at (916) 327-2200, or by email at [kheroyro@arb.ca.gov](mailto:kheroyro@arb.ca.gov).

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Alexa Malik, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-4011, and Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the Staff Report and all subsequent regulatory documents, including the FSOR, when completed are also available on the ARB Internet site for this rulemaking at <http://www.arb.ca.gov/regact/2007/ordiesl07/ordiesl07.htm>

#### COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

##### *Costs to Businesses and Private Individuals*

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

The total cost of the regulation is expected to be between \$3.0 and 3.4 billion in 2006 expenditure equivalent dollars (2006 dollars). This represents the total cost of the regulation if all money required to comply with the proposed regulation were spent today. This cost would be spread over the years 2009 to 2030, with the majority of costs occurring in the first 12 years. On an annual basis, the cost would vary between \$229 million and \$257 million per year, averaging \$243 million per year. The total cost would include the expected cost of retrofit devices and engine repowers, as well as the cost of accelerating turnover to newer, cleaner vehicles. About half of this cost is expected to be incurred by the construction industry, nearly 15 percent by the rental industry, and about 10 percent by the mining industry. Government fleets would be expected to incur about five percent of the total cost. The remaining costs, approximately 20 percent, would be paid by other industries such as utilities, recycling, landfills, landscaping, and airlines.

Costs to individual fleet owners would vary depending on the size of each fleet, its initial vehicle composition and vehicle age, and its normal purchasing practices. Costs also would vary depending on the compliance strategy chosen by each fleet (retrofit, repower, retire, buy new, and/or buy used). For a typical fleet, total costs are expected to be \$111 per hp (in 2006 dollars). Fleets could incur costs anywhere from \$0 to \$170 per hp, depending on their initial composition and vehicle age. For a typical medium-sized fleet with total fleet horsepower of 3,000 hp, the total cost of the regulation is expected to be about \$333,000 (in 2006 dollars).

The Executive Officer has made an initial determination that the proposed regulatory action may have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons. ARB staff has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submission may include the following approaches for consideration:



- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

Alternatives that staff considered are described in more detail in the Staff Report.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. Because the proposed regulation does not apply to vehicles used only for personal, residential, or non-commercial purposes, ARB is not aware of any cost impacts that a representative person would necessarily incur in his or her private capacity in reasonable compliance with the proposed action. Businesses such as construction firms typically pass some of the cost of compliance on to their customers. Accordingly, ARB anticipates that businesses would similarly pass on some of the costs incurred by this regulation. As a result, staff anticipates a representative individual may incur small additional costs (less than one percent) because of a possible rise in the cost of construction. (See *Effect on Housing Costs* below.)

Overall, most affected businesses will be able to absorb or pass on the costs of the proposed regulation with no significant adverse impacts on their profitability. This finding is based on ARB staff's analysis of the estimated change in "return on owner's equity" (ROE) for fleets within each industry type affected by the regulation. A 10 percent decline in ROE has traditionally been used by ARB to indicate a significant impact on profitability. For fleets that do not pass through any of the cost of compliance to their customers, the ROE analysis found that between about 60 and 80 percent of fleets would still be expected to be able to absorb the cost of the regulation without incurring more than a 10 percent change in ROE. Owners of small fleets are more likely to be able to absorb the cost of the regulation without exceeding 10 percent change in ROE because their exemption from the regulation's mandatory turnover provisions would result in significantly lower costs relative to medium and large fleets. The 20 to 40 percent of fleet owners for which the regulatory costs exceed a 10 percent change in ROE will have to pass through at least some of the costs to their customers in the form of higher prices for their services to maintain their profitability.

Most construction firms, rental companies, airlines, and landscaping services companies are expected to be able to pass on their costs to customers. Rental companies may actually see an increase in revenue as many af-

ected fleets downsize, retire less-used vehicles, and consider rental as a more attractive alternative to owning vehicles.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action may lead to the creation and elimination of some jobs within the State of California, the creation of new businesses and elimination of some existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report.

Because of the significant cost imposed by this regulation, it is possible that some businesses with affected fleets will be eliminated. It is also possible that some businesses will choose to consolidate (or merge), change owners, or relocate due to this regulation. However, this regulation would increase the use of VDECS in off-road diesel vehicles in the State. Staff estimates that over its course, the regulation will require the installation of over 126,000 VDECS. It is very likely that additional businesses will be created or existing businesses expanded to aid in the making, distribution, cleaning, and maintenance of these VDECS through the duration of the regulation.

The regulation would likely cause many jobs to be created due to the increase in demand for VDECS, newer engines, and newer vehicles, as well as for the need for fleets to plan for compliance. Staff expects new jobs to be created for the production, sales, installation, and maintenance of VDECS, the installation of repowers, and consulting to assist fleets in finding the most cost-effective path to compliance. It is expected that some jobs will also be consolidated (i.e., the employees of one company being absorbed by another) or modified (i.e., a muffler mechanic may be reassigned to VDECS maintenance and installation).

As structured, the proposed regulation would affect out-of-state businesses that operate vehicles in California just as it affects the California-based businesses that operate here. However, some large out-of-state businesses may find it less costly to comply because they can opt to move the cleaner portions of their fleets to California rather than pursuing retrofits or repowers. Fleets operated solely within California will not have this ability. The regulation may also have some adverse impacts on the ability of some California businesses that regularly use their California equipment to compete for projects outside the State. This is because to cover compliance costs, California businesses may need to bid higher than firms who are not subject to the rule. Similarly, the regulation may have some adverse impacts on manufacturing or mining businesses that operate in a very competitive national market and compete



with firms outside California. However, staff expects that off-road vehicle use in manufacturing represents a smaller percentage of the company's total operating expense and that the increase in cost attributable to the regulation will only be a small portion of the operating expense. Thus, many owners of manufacturing fleets are expected to be able to absorb the costs without a significant impact on profitability.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will affect small businesses. The total cost for a small business to comply with the in-use emission standards of the regulation (e.g., initial reporting and purchasing of retrofits, repowers and vehicles) is expected to be approximately \$48/hp. Typical ongoing costs for small businesses, including retrofit maintenance (e.g., maintenance, fuel penalties, and electricity costs for active filters) and reporting costs will be approximately \$2/hp per year from 2014 until 2026. A typical small business with 1,000 horsepower could expect the total cost of the regulation over its lifetime to be \$48,000 (2006 dollars), with annual costs of \$2,000 per year during that period.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California. The reporting requirements are necessary for the enforcement of the regulation, and enforcement of the regulation is necessary to ensure the emission reductions and public health benefits associated with the regulation occur.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the board or that has otherwise been identified and brought to the attention of the board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### *Fiscal Impact on State Government*

The Executive Officer has determined that the proposed regulatory action will create costs or savings, as defined in Government Code sections 11346.5(a)(6) for a state agency or in federal funding to the state, as discussed in the "Fiscal Impact on State Government" section below. State agencies will incur costs if they own vehicles covered by the regulation.

Two separate fiscal effects may pertain at the state government level: costs to state agencies that own affected diesel vehicles for compliance and costs for ARB to implement and enforce the regulations. The proposed

regulatory action will not affect federal funding to the state.

The total cost to state agencies for compliance is expected to be between \$84 million and \$90 million (2006 dollars). Annual costs are expected to be about \$7 million per year (until 2030). Initial costs to state agencies will occur in fiscal year (FY) 2008–2009 for the initial reporting, with the initial costs for compliance actions such as installing retrofits or repowering engines occurring in FY2009–2010. The California Department of Transportation (CalTrans) is the State agency with the largest fleet and the State agency expected to incur the greatest cost impact. Compliance costs for CalTrans are expected to be \$1.2 million on average annually from FY2009–2010 until FY2029–2030 and to total \$11 million to \$13 million over the course of the regulation (2006 dollars). It is anticipated that affected agencies will be able to plan ahead for and budget adequately to cover the costs of compliance with the regulation.

The regulation will also impose additional staffing costs to ARB. ARB staff has identified a need for additional resources to aid in implementation, outreach, education, and enforcement of the regulation.

#### *Fiscal Impact on Local Government*

The Executive Officer has determined that the proposed regulatory action will result in nondiscretionary costs for local agencies or school districts (if they own affected vehicles), and may impose a mandate, as defined in Government Code section 11346.5(a)(5). However, the mandate is not reimbursable by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, because the costs would apply to all owners of affected vehicles, not just local agencies.

The regulation will impose costs on local agencies that own affected vehicles. The total cost to local agencies for compliance is expected to be between \$95 million and \$106 million (2006 dollars). Total annual costs for all affected agencies are expected to be about \$8 million per year.

Local government fleets that are in low-population counties should expect lower annual costs of approximately \$3.60/hp to \$4.20/hp per year.

Local government agencies captive to attainment areas similarly should expect lower annual costs of \$4/hp to \$5/hp per year.

Total compliance costs for a typical local agency with 1000 hp would be \$83,000 (2006 dollars), or \$6,000 per year on average from FY2014–2015 through FY2029–2030.

The initial cost to local agencies would be in FY2008–2009 for reporting, with the first costs for compliance actions such as installing retrofits or repow-

ering engines in FY2009–2010 for the largest local agency fleets, in FY2012–2013 for medium local agency fleets, and FY2014–2015 for small local agency fleets and those in low–population counties.

#### *Effect on Housing Costs*

The Executive Officer has determined that the proposed regulation would have an effect on housing costs. It has been estimated that the proposed regulation would potentially increase the costs of newly constructed housing approximately \$1000 per unit. The ARB will make available to the public, upon request, the agency’s evaluation of the effect of the proposed regulatory action on housing costs.

### SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e–mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received **no later than 12:00 noon, May 23, 2007**, and addressed to the following:

- Postal mail: Clerk of the Board, Air Resources Board  
1001 I Street, Sacramento, California 95814
- Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>
- Facsimile submittal: (916) 322–3928

The Board requests but does not require that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

### STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted to the ARB in Health and Safety Code sections 39002, 39515, 39516, 39600, 39601, 39602, 39650, 39656, 39658, 39659, 39665, 39667, 39674, 39675, 40000, 41511, 42400, 42400.1, 42400.2, 42402.2, 43000, 43000.5, 43013, 43016, and 43018. This action is proposed to implement, interpret, or make specific Health and Safety Code sections 39002, 39515, 39516, 39600, 39601, 39602, 39650, 39656, 39657, 39658, 39659, 39665, 39667, 39674, 39675, 40000, 41511, 42400, 42400.1, 42400.2, 42402.2, 43000, 43000.5, 43013, 43016, and 43018.

### HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB’s Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1<sup>st</sup> Floor, Sacramento, CA 95814, (916) 322–2990.

### TITLE 16. BOARD OF BARBERING AND COSMETOLOGY

NOTICE IS HEREBY GIVEN that the Board of Barbering and Cosmetology is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at 2420 Del Paso Rd., Sequoia Room, Sacramento, California, from 9:00 a.m. to 11:00 a.m., on May 21, 2007. Written comments, including those sent by mail, facsimile, or e–mail to the addresses listed under Contact Person in this Notice, must be received by the Board of Barbering and Cosmetology at its office not later than 5:00 p.m. on May 21, 2007 or must be received by the board at the hearing. The board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 7312, 7337.5(b), and 7421 of the Business and Professions Code, and to implement, interpret or make specific Sections 7415, 7417, 7418, 7419, 7420, 7423, 7424, and 7425 of said Code, the

board is considering changes to Division 9 of Title 16 of the California Code of Regulations as follows:

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Chapter 10 of Division 3 of the Business and Professions Code, Section 7421 authorizes fees to be set by the board, within the limits set forth in article 13, in amounts necessary to cover the expenses of the board in performing its duties under this chapter.

Amend Section 998

The Board of Barbering and Cosmetology is proposing to establish a \$75 application and examination fee for cosmetologist, barber, electrologist, manicurist, and esthetician license types, and to increase the license renewal fee by \$10.00 for said licenses. The proposal is to compensate for the actual costs for developing, purchasing, grading, and administering the examination and to cover the expenses of the Board in performing its duties. In addition, in regulations the fees are combined (application, examination and initial license fee) and in statute the fees are separate (application and examination fee and license fee). The Board believes that the fees in regulations should follow the same format of the statute. The proposed language must be changed to specify an initial license fee and an application and examination fee.

The proposals would also support potential Budget Change Proposals for additional positions.

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

An analysis of the current fund condition indicated that in fiscal year 2008/2009, the Board of Barbering and Cosmetology may be facing a negative fund balance. The proposed amendments would increase revenues.

No federal funding impact anticipated.

Nondiscretionary Costs/Savings to Local Agencies:

None

Local Mandate:

None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement:

None

Business Impact:

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses:

The Board of Barbering and Cosmetology has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the board are: a \$75 increase per examination application to be paid by an individual person. Licensees would incur an additional \$10 at the time of each renewal period of their license.

Effect on Housing Costs:

None

## EFFECT ON SMALL BUSINESS

See impact on private person or business

## CONSIDERATION OF ALTERNATIVES

The Board of Barbering and Cosmetology must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

## INITIAL STATEMENT OF REASONS AND INFORMATION

The Board of Barbering and Cosmetology has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

## TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board of Barbering and Cosmetology at 2420 Del Paso Rd., Suite 100, Sacramento, California 95834.

**AVAILABILITY AND LOCATION OF  
THE FINAL STATEMENT OF REASONS  
AND RULEMAKING FILE**

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below. You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below **[or by accessing the website listed below]**.

**CONTACT PERSON**

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Paul Cobb  
Address: Board of Barbering and  
Cosmetology  
2420 Del Paso Rd., Suite 100  
Sacramento, CA. 95834  
Telephone No.: (916) 575-7100  
Fax No.: (916) 575-7282  
E-Mail Address: Paul\_Cobb@dca.ca.gov

The backup contact person is:

Name: Heather Berg  
Address: Board of Barbering and  
Cosmetology  
2420 Del Paso Rd., Suite 100  
Sacramento, CA. 95834  
Telephone No.: (916) 575-7100  
Fax No.: (916) 575-7282  
E-Mail Address: Heather\_Berg@dca.ca.gov

**Website Access:**

Materials regarding this proposal can be found at [www.barbercosmo.ca.gov](http://www.barbercosmo.ca.gov)

**TITLE 16. CALIFORNIA BOARD OF  
OCCUPATIONAL THERAPY**

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Oakland Airport Plaza Hotel, 150 Hegenberger Road, Oakland, California, at 10:00 a.m., on May 24, 2007. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on May 21, 2007 or must be received by the Board at the

hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by sections 2570.3 and 2570.20 of the Business and Professions Code, and to implement, interpret or make specific sections 2570.2 and 2570.3 of the Business and Professions Code, the Board is proposing revising Division 39, Title 16 of the California Code of Regulations as follows:

**INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW**

Existing law requires an occupational therapist (OT) complete post professional education and supervised on-the-job training in order to provide treatment to clients in the advanced practice areas of hand therapy, physical agent modalities, and swallowing assessment, evaluation, and intervention. Advanced practice approval is granted once a licensee demonstrates competency in the specific area for which they applied. Advanced practice approval does not signify expertise.

Amend section 4154. The proposed language removes the term "certification" from the regulation in order to eliminate confusion between occupational therapists who have advanced practice approval and those who are experts in their field. The proposal also removes from subsection (d) language concerning dates which is no longer relevant.

Amend section 4155. The proposed language establishes an application abandonment period of six months and removes outdated language which allowed OTs to submit application for advanced practice approval based on substantially equivalent education and training.

**FISCAL IMPACT ESTIMATES**

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None



Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the adoption of this regulation would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: None

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

#### EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation would not affect small businesses because the regulation does not regulate small businesses, does not require reports or any other compliance activities.

#### CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

#### TEXT OF PROPOSAL AND INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of reasons that sets forth the reasons for the proposed action and has all the information upon which the proposal is based.

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained from our website as listed below upon written request from the contact person listed below.

#### AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Board's website as listed below.

#### CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

April Freeman  
California Board of Occupational Therapy  
444 North Third Street, Suite 410  
Sacramento, CA 95814  
(916) 322-3278  
(916) 445-6167 (FAX)  
April\_Freeman@dca.ca.gov

The backup contact person is:

Heather Martin  
California Board of Occupational Therapy  
444 North Third Street, Suite 410  
Sacramento, CA 95814  
(916) 322-3394  
(916) 445-6167 (FAX)  
Heather\_Martin@dca.ca.gov

Website Access: All materials regarding this proposal can be found on-line at [www.bot.ca.gov](http://www.bot.ca.gov) > Laws and Regulations > Proposed Regulations.

#### TITLE 22. OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT

#### NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT

ACTION: Notice of proposed rulemaking.  
SUBJECT: **Hospital Fair Pricing Policies Reporting**

#### PUBLIC PROCEEDINGS

NOTICE IS HEREBY GIVEN that the Office of Statewide Health Planning and Development (hereafter

the “Office”) proposes adding Sections 96040 through 96050 to Title 22 of the California Code of Regulations related to the submission of hospital discount payment policies, charity care policies, eligibility procedures for those policies, review processes, and application forms for charity care and discounted payment programs.

## AUTHORITY AND REFERENCE

The Director of the Office, pursuant to Section 11152 of the Government Code, has the authority to adopt rules and regulations necessary to govern the activities of the Office.

This action is implementing, interpreting, or making specific Health and Safety Code Section 127435, which requires hospitals to submit their discount payment policies, charity care policies, eligibility procedures for those policies, review processes, and application forms for charity care and discounted payment programs to the Office in a manner determined by the Office.

## WRITTEN COMMENT PERIOD

NOTICE IS ALSO GIVEN that no public hearings are scheduled to be held. Interested parties may submit written comments presenting statements, arguments, or contentions relating to the proposed action. All comments must be received by the Office by 5:00 p.m. on May 28, 2007, which is designated as the close of the written comment period. A public hearing will be held if, no later than 15 days prior to the close of the written comment period, an interested person, or his or her duly authorized representative, submits a written request to hold a public hearing to the Contact Person (see Contact Person and address below).

## CONTACT PERSON

General and substantive inquiries and comments concerning the proposed regulations may be addressed to Kenrick J. Kwong, Manager, Accounting and Reporting Systems Section, Office of Statewide Health Planning and Development, 818 K Street, Room 400, Sacramento, California 95814 (telephone: 916-323-7681; fax: 916-327-0377; e-mail: [kkwong@oshpd.ca.gov](mailto:kkwong@oshpd.ca.gov)). The Office’s backup contact person is Tim Pasco, Health Program Auditor III, Hospital Financial Data Unit, Office of Statewide Health Planning and Development, 818 K Street, Room 400, Sacramento, California 95814 (telephone: 916-323-1955; fax: 916-327-0377; e-mail: [tpasco@oshpd.ca.gov](mailto:tpasco@oshpd.ca.gov)).

## POLICY STATEMENT OVERVIEW/INFORMATIVE DIGEST

Assembly Bill 774 (Chapter 755, Statutes of 2006) added California Health and Safety Code Section 127435 requiring hospitals to submit their discount payment policies, charity care policies, eligibility procedures for those policies, review processes, and application forms for charity care and discounted payment programs to the Office.

The purpose of the proposed regulations is to implement the program for collecting the information required by California Health and Safety Code Section 127435. The proposed regulations specify that hospitals must submit the information electronically using the Office’s Internet California Charity Care Collection application located at: <https://4c.oshpd.ca.gov/>.

## FISCAL IMPACT ESTIMATES:

- A. Estimate of Cost or Savings to Any State Agency (Cal. Gov’t Code 11346.5(a)(6)): None.
- B. Cost to Any Local Agency or School District That is Required to be Reimbursed by the State (Cal. Gov’t Code 11346.5(a)(6)): None.
- C. Non-Discretionary Cost or Savings Imposed on Local Agencies (Cal. Gov’t Code §11346.5(a)(6)): None.
- D. Cost or Savings in Federal Funding to the State (Cal. Gov’t Code §11346.5(a)(6)): None.
- E. Impact on Housing Costs (Cal. Gov’t Code §11346.5(a)(12)): None.
- F. Potential Cost Impact on Private Persons or Affected Business, Other Than Small Businesses (Cal. Gov’t Code §11346.5(a)(9)): The Office is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

## DETERMINATIONS

As required by Government Code Section 11346.5(a)(5), the Office has determined that the proposed regulations will have no fiscal impact on local agencies or school districts. There is no local mandate created by these proposed regulations which would require state reimbursement required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

As required by Government Code Section 11346.5(a)(8), the Office has made an initial determination that the proposed regulations would not have a significant statewide adverse economic impact directly af-

fecting businesses, including the ability of California businesses to compete with businesses in other states.

Pursuant to Government Code Section 11346.3(b)(1), the Office has determined that the proposed regulations would not significantly affect the following:

- (A) The creation or elimination of jobs within the State of California;
- (B) The creation of new businesses or the elimination of existing businesses within the State of California; or
- (C) The expansion of businesses currently doing business within the State of California.

As required by Section 4 of Title 1 of the California Code of Regulations, the Office has determined that the proposed regulations will not affect small businesses as defined in Government Code Section 11342.610. All affected hospitals either have more than 150 beds, have annual gross receipts exceeding \$1,500,000, are not independently owned and operated, or are organized as nonprofit institutions.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

The Office prepared an Initial Statement of Reasons for the proposed regulations. The Initial Statement of Reasons, the text of the proposed changes (in italic and strikeout format), and the information in support of the proposed changes are available from the Office at the address indicated above (see Contact Person). In addition, the Initial Statement of Reasons and the text of the proposed changes will be available on the Office's web site at: [www.oshpd.ca.gov/HID/AboutHID/laws.htm](http://www.oshpd.ca.gov/HID/AboutHID/laws.htm). The Office will mail all affected hospitals the Initial Statement of Reasons and the text of the proposed changes with this notice.

Any person submitting a comment on the proposed regulations has the right to request a copy of the Final Statement of Reasons once it has been prepared from the Contact Person (see Contact Person).

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the public comment period or at the end of a public hearing, if one is requested and held, the Office may, without further notice, adopt the regulatory changes as proposed or adopt them with nonsubstantial or grammatical changes as it deems appropriate. If the Office intends to adopt the regulations with modifications, other than nonsubstantial or grammatical changes, the full text of the modified regulations will be made available to the public at least 15 days before they are adopted. A request for copies of modified regula-

tions should be submitted to the Contact Person at the address noted above.

#### ALTERNATIVES

According to Government Code Section 11346.5(a)(12), the Office must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

### GENERAL PUBLIC INTEREST

#### DEPARTMENT OF TOXIC SUBSTANCES CONTROL

NOTICE OF CONSENT DECREE  
FORMER LOCOMOTIVE AIR SERVICES, INC.  
(LASI) ALSO KNOWN AS CHROME  
CRANKSHAFT FACILITY  
BELL GARDENS, CALIFORNIA

Public Comment Period: March 28, 2007  
through May 7, 2007

The Department of Toxic Substances Control ("DTSC"), pursuant to the authority vested in DTSC under Section 107 of CERCLA, 42 U.S.C. § 9607, and California Health and Safety Code section 25358.3(e), proposes to finalize a Consent Decree regarding the Former Locomotive Air Services, Inc. (LASI), located at 6845 Florence Place, Bell Gardens, California (also known as the Former Chrome Crankshaft Facility).

On or about March 28, 2007, DTSC will be filing a complaint in United States District Court, Central District of California against a number of defendants under the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq.* and the California Health and Safety Code section 25358.3(e). The Consent Decree is intended to resolve the liability of the defendants for certain DTSC past and future response costs at the Facility. The Consent Decree requires the defendant to pay DTSC \$5.1 million. The Consent Decree provides contribution protection to the defendants and includes mutual covenants not to sue.

DTSC is holding a comment period on the Consent Decree. Written comments on the proposed Consent Decree must be submitted on or before 5:00 p.m. May 7, 2007. DTSC may modify or withdraw its consent to the

Consent Decree if such comments disclose facts or considerations that indicate the proposed Consent Decree is inappropriate, improper or inadequate.

Comments should be addressed to:

Greg Holmes  
[GHolmes@dtsc.ca.gov](mailto:GHolmes@dtsc.ca.gov)  
Department of Toxic Substances Control,  
5796 Corporate Avenue  
Cypress, California 90630-4732.

Any comments sent electronically should also be sent by mail. Comments should refer to the Former LASI or Chrome Crankshaft Facility proposed Consent Decree.

During the public comment period, the Consent Decree may be examined on the DTSC Internet Web site at: [http://www.envirostor.dtsc.ca.gov/public/profile\\_report.asp?global\\_id=19350473](http://www.envirostor.dtsc.ca.gov/public/profile_report.asp?global_id=19350473)

The Consent Decree may also be examined at the following locations:

Department of Toxic Substances Control,  
5796 Corporate Avenue  
Cypress, California 90630-4732.  
Please Contact Ms. Julie Johnson at (714) 484-5337  
Hours: Monday-Friday 8:00am — 5:00pm

A copy of the Consent Decree may also be obtained by mail from the DTSC Office in Cypress, 5795 Corporate Avenue, Cypress, CA 90630-4732, or by faxing or e-mailing a request to Mr. Greg Holmes, [gholmes@dtsc.ca.gov](mailto:gholmes@dtsc.ca.gov), fax number (714) 484-5438. If requesting a copy from DTSC, the cost for reproductions is \$0.15 (15 cents) per page. Please make your check or money order payable to the Department of Toxic Substances Control and mail it with your request to the address shown above.

## **TITLE 2. DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**

NOTICE IS HEREBY GIVEN that the prospective contractors listed below have been required to submit a Nondiscrimination Program (NDP) or a California Employer Identification Report (CEIR) to the Department of Fair Employment and Housing, in accordance with the provisions of Government Code Section 12990. No such program or (CEIR) has been submitted and the prospective contractors are ineligible to enter into State contracts. The prospective contractor's signature on Standard Form 17A, 17B, or 19, therefore, does not constitute a valid self-certification. Until further notice, each of these prospective contractors in order to

submit a responsive bid must present evidence that it's Nondiscrimination Program has been certified by the Department.

ASIX Communications, Inc.  
DBA ASI Telesystems, Inc.  
21150 Califa Street  
Woodland Hills, CA 91367

Bay Recycling  
800 77th Avenue  
Oakland, CA 94621

C & C Disposal Service  
P.O. Box 234  
Rocklin, CA 95677

Choi Engineering Corp.  
286 Greenhouse Marketplace, Suite 329  
San Leandro, CA 94579

Fries Landscaping  
25421 Clough  
Escalon, CA 95320

Marinda Moving, Inc.  
8010 Betty Lou Drive  
Sacramento, CA 95828

MI-LOR Corporation  
P.O. Box 60  
Leominster, MA 01453

Peoples Ridesharing  
323 Fremont Street  
San Francisco, CA 94105

San Diego Physicians & Surgeons Hospital  
446 26th Street  
San Diego, CA

Southern CA Chemicals  
8851 Dice Road  
Santa Fe Springs, CA 90670

Tanemura and Antle Co.  
1400 Schilling Place  
Salinas, CA 93912

Turtle Building Maintenance Co.  
8132 Darien Circle  
Sacramento, CA 95828

Univ Research Foundation  
8422 La Jolla Shore Dr.  
La Jolla, CA 92037

Vandergoot Equipment Co.  
P.O. Box 925  
Middletown, CA 95461



DEPARTMENT OF FISH AND GAME

Department of Fish and Game —  
Public Interest Notice  
For Publication April 6, 2007  
PROPOSED RESEARCH ON FULLY  
PROTECTED SPECIES  
Baseline Surveys for the San Francisco Gartersnake  
(*Thamnophis sirtalis tetrataenia*) in  
San Mateo County, California

The Department of Fish and Game (“Department”) received a proposal on February 27, 2007 from Ms. Karen Swaim, Swaim Biological Inc., Livermore, California, requesting authority to conduct field studies on the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), a Fully Protected reptile, for research purposes, consistent with the protection and recovery of the species.

The applicant has the required Scientific Collecting Permit (SCP) to take protected species of wildlife. Permit conditions require that the holder of an SCP obtain special authorization from the Department for research on Fully Protected species. The proposed activities include using terrestrial live-traplines in San Mateo and San Francisco counties. The proposed work is intended to provide population and distribution information, and assess efficacy of previous conservation measures. The Department intends to issue, under specified conditions, a Memorandum of Understanding (MOU) that would authorize the applicant, as Principal Investigator, to carry out the proposed activities. As this snake is also a federally endangered species, the applicant is required to possess a valid Federal Threatened and Endangered Species permit.

Pursuant to California Fish and Game Code (FGC) Section 5050(a)(1), the Department may authorize take of Fully Protected reptiles after 30 days notice has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 5050 for take of Fully Protected reptiles, it would issue the authorization on or after April 20, 2007, for a term of two years. Contact: Wildlife Programs Branch, 1812 Ninth Street, Sacramento, CA 95814, Attn.: Dale Steele.

**RULEMAKING PETITION  
DECISIONS**

DEPARTMENT OF MENTAL HEALTH

DEPARTMENT DECISION

The Director of DMH denies the petition to amend or repeal Section 891 in Title 9, Division 1, pertaining to Internet access for Non-LPS Internet access to Non-Lanterman-Petris-Short (Non-LPS) Act patients in DMH facilities.

Petitioner is a Non-LPS patient placed in or committed to a facility under the authority of law for care and treatment.

DMH notes the Petitioner previously filed a complaint with the Atascadero State Hospital’s Patients’ Rights Advocate in which he questioned patients’ access to computers and the Internet. In addition, an Executive Director level review of the complaint was requested and conducted.

DMH also notes the Petitioner provides a proposed amendment to Section 891.

The Petitioner claims the lack of internet access does the following:

1. It is a violation of First Amendment Rights under both the United States and the California Constitutions.
2. The promotion of public safety is necessary: It may be accomplished via the monitoring of Non-LPS patients’ Internet access.
3. It blocks the Non-LPS patients’ access to courts, legislative and regulatory proceedings.
4. Provides a barrier to communication with attorneys.
5. It blocks access to political candidates, news organizations and educational institutions.

In addition, the Petitioner claims that federal and California Appellate courts have determined that an indefinite blanket denial to parolees’ Internet access is inappropriate.

DMH reviewed the Petitioner’s claims and concludes the following:

1. A lack of internet access does not violate First Amendment rights.
2. DMH has determined that the internet is a public safety issue and will not make it available to the Non-LPS patients.

3. Internet usage presents a danger of patients finding web sites that would give them access to victims outside the facility. In addition, accessed materials interfere with patient treatment or provide personal information about staff at the facility.
4. Individual staff supervision would be necessary for patients accessing material via the internet. Any type of electronic monitoring of patients would also be impractical.
5. DMH provides alternative methods of education and a law library at each state hospital for legal use.
6. State Hospitals provide access to computers, in accordance with facility policy, with a restriction on internet usage.
7. There is no legally established right of patients in inpatient facilities to internet access, particularly with so many who have histories of convictions for predatory behavior.
8. There are other avenues and mechanisms for patients to exercise free speech than access to the internet.
9. Internet usage has nothing to do with least restrictive means.
10. An alternative way of obtaining notification of changes to the California Code of Regulations is available by subscribing to the regulatory mailing lists.

Finally, the Petitioner's claim that the courts have determined that an indefinite blanket denial to *parolees*' Internet access does not apply to an individual placed in or committed to a facility under the authority of law for care and treatment.

DMH contends that Title 9, Division 1, Section 891 of the CCR, regarding the denial of Internet access to Non-Lanterman-Petris-Short Act Patients in DMH facilities must be maintained to ensure the safety and security of the facility's patients and staff, and protect members of the public.

## **DECISION NOT TO PROCEED**

### **BOARD FOR GEOLOGISTS AND GEOPHYSICISTS**

#### **NOTICE OF DECISION NOT TO PROCEED WITH RULEMAKING ACTION**

The Board for Geologists and Geophysicists has decided not to proceed with its rulemaking action described in the Notice published in the California Regulatory Notice Register on June 23, 2006, OAL File

#Z-06-0613-01, concerning Title 16, section 3065, Code of Professional Standards. The Board intends to re-notice the proposed regulations shortly.

## **DEPARTMENT OF GENERAL SERVICES**

### **NOTICE OF DECISION NOT TO PROCEED Pursuant to Government Code section 11347**

#### **Procurement Division, Department of General Services**

Pursuant to Government Code Section 11347, the Department of General Services (DGS) hereby gives notice that it has decided not to proceed with the rulemaking action published in the California Regulatory Notice Register (CRNR), October 27, 2006 (CRNR 2006, 43-Z, p. 1581, OAL File No. Z-06-1017-01). The proposed rulemaking concerned a Disabled Veteran Business Enterprise Incentive.

However, DGS intends to publish a new notice on the same rulemaking proposal April 6, 2007.

Any interested person with questions concerning this rulemaking should contact Melodie Cato at either (916) 375-4935 or by e-mail at [melodie.cato@dgs.ca.gov](mailto:melodie.cato@dgs.ca.gov).

The Department will also publish this Notice of a Decision Not to Proceed on its website.

## **OAL REGULATORY DETERMINATION**

### **OFFICE OF ADMINISTRATIVE LAW**

#### **DETERMINATION OF ALLEGED UNDERGROUND REGULATIONS**

**(Pursuant to Government Code Section 11340.5  
and Title 1, section 270, of the California Code of  
Regulations)**

STATE OF CALIFORNIA

OFFICE OF ADMINISTRATIVE LAW

2006 OAL DETERMINATION No.2  
(OAL File # CTU 06-0525-01)

REQUESTED BY: COUNCIL FOR ENVIRONMENTAL AND  
ECONOMIC BALANCE

CONCERNING: STATE LANDS COMMISSION RESOLUTION  
REGARDING ONCE-THROUGH COOLING  
DETERMINATION ISSUED PURSUANT TO  
GOVERNMENT CODE SECTION 11340.5.

## SCOPE OF REVIEW

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. Our review is limited to issues of administrative law. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

## ISSUE

On May 25, 2006, the Council for Environmental and Economic Balance (Petitioner) submitted a petition to OAL alleging that the State Lands Commission (Commission) issued, used, enforced, or attempted to enforce an underground regulation<sup>1</sup> in violation of Government Code section 11340.5.<sup>2</sup> The alleged underground regulation is a resolution adopted by the Commission on April 17, 2006, entitled “Resolution by the California State Lands Commission Regarding Once-Through Cooling in California Power Plants.” The Petitioner specifically challenges the second, third, and fourth resolved clauses of the resolution.

## DETERMINATION

OAL determines that the second, third and fourth resolved clauses in the resolution constitute an underground regulation.

## FACTUAL BACKGROUND

On April 17, 2006, the Commission adopted a resolution dealing with the issue of Once-Through Cooling (OTC) in California power plants.

The resolution contains the following resolved clauses<sup>3</sup> For ease of reference, OAL has numbered the clauses. They were not numbered in the Commission’s resolution.

<sup>1</sup> An underground regulation is defined in Title 1, California Code of Regulations, section 250:

“Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

<sup>2</sup> Unless specified otherwise code references are to the California Government Code.

<sup>3</sup> The Petitioner did not challenge the whereas clauses, so we do not include them in this discussion.

**1. RESOLVED**, by the California State Lands Commission that it urges the California Energy Commission and the State Water Resources Control Board to expeditiously develop and implement policies that eliminate the impacts of once-through cooling on the environment, from all new and existing power plants in California; and be it further

**2. RESOLVED**, that as of the date of this Resolution, the Commission shall not approve leases for new power facilities that include once-through cooling technologies; and be it further

**3. RESOLVED**, that the Commission shall not approve new leases for power facilities, or leases for re-powering existing facilities, or extensions or amendments of existing leases for existing power facilities, whose operations include once-through cooling, unless the power plant is in full compliance, or engaged in an agency-directed process to achieve full compliance, with requirements imposed to implement both Clean Water Act Section 316(b) and California water quality law as determined by the appropriate agency, and with any additional requirements imposed by state and federal agencies for the purpose of minimizing the impacts of cooling systems on the environment, and be it further

**4. RESOLVED**, that the Commission shall include in any extended lease that includes once-through cooling systems, a provision for noticing the intent of the Commission to consider re-opening the lease, if the appropriate agency has decided, in a permitting proceeding for the leased facility, that an alternative, environmentally superior technology exists that can be feasibly installed, and that allows for continued stability of the electricity grid system, or if state or federal law or regulations otherwise require modification of the existing once-through cooling system; and, be it further

**5. RESOLVED**, that the Commission calls on public grantees of public trust lands to implement the same policy for facilities within their jurisdiction; and be it further

**6. RESOLVED**, that the Commission’s Executive Officer transmit copies of this resolution to the Chairs of the State Water Resources Control Board, the California Energy Commission, and the California Ocean Protection Council, all grantees, and all current lessees of public trust lands that utilize once-through cooling.

## PETITIONER'S ARGUMENT

The Petitioner challenged resolved clauses 2, 3, and 4 as being underground regulations which are without legal effect unless adopted pursuant to the Administrative Procedure Act (APA), saying in part that:

The [Commission] Resolution is a regulation that precludes the [Commission] from issuing new leases for power plants that would have once-through cooling structures. The Resolution also precludes the issuance of lease extension or amendments for other power plants depending upon how the power plant is complying with state water quality laws. Additionally, the Resolution requires that the [Commission] include a provision in extended leases that allows the [Commission] to re-open a lease under certain circumstances. The Resolution establishes a set of rules that is generally applicable to all current, or future, power plants that have once-through cooling systems. (Petition, p. 4)

## AGENCY RESPONSE

The Commission argues in response that:

[the] resolution simply puts lessees of state coastal lands, and prospective lessees of state coastal lands, on notice of the Commission's concern for the adverse environmental impacts associated with the use of OTC in power plants and its intention to review closely any future proposed use of OTC in power plant facilities seeking a lease of state land. The terms of each lease of state land are separately negotiated taking into account the activities proposed, the configuration and conditions of the site, and environmental impacts. Each lease is approved by an action of the Commission at a public meeting. The terms of individual existing leases are not changed, nor are the terms of individual future leases established, by the Commission's OTC resolution. (Commission's response, p.1)

## UNDERGROUND REGULATIONS

Section 11340.5, subdivision (a), prohibits state agencies from issuing rules unless the rules comply with the APA. It states, in part:

(a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual,

instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of section 11340.5 it creates an underground regulation. "Underground regulation" is defined in title 1, Cal. Code Regs. § 250 as follows:

"Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

OAL is empowered to issue its determination as to whether or not an agency employs an underground regulation pursuant to section 11340.5 subdivision (b). An OAL determination that an agency is using an underground regulation is not enforceable against the agency through any formal administrative means, but it is entitled to "due deference"<sup>4</sup> in any subsequent litigation of the issue.

## ANALYSIS

To determine that an agency is in violation of section 11340.5, it must be demonstrated that the alleged underground regulation actually is a regulation as defined by section 11342.600, that it has not been adopted pursuant to the APA, and that it is not subject to an express statutory exemption from the APA. The second and third components of this three-part test may be dealt with summarily. Neither the petitioner nor the Commission contend that the resolution has been adopted pursuant to the APA, or that the resolution is not subject to APA rulemaking requirements due to an express statutory exemption.<sup>5</sup>

Before specifically evaluating whether the three disputed clauses in the resolution are regulations as defined in section 11342.600, we need to address a general issue, raised in the Commission's response to the petition, regarding the nature of this enactment. The Commission argues that the resolution merely puts the lessees on notice that the Commission is concerned about OTC. If the resolution is, in fact, only a statement of the Commission's general intent — in other words, if it does not have regulatory impact — then it is not a regulation and therefore cannot be an underground regula-

<sup>4</sup> *Grier v. Kizer* (1990) 219 Cal.App.3d 422, 268 Cal.Rpt. 244.

<sup>5</sup> CA Government Code 11346(a).



tion. In order to determine whether or not the challenged provisions of the resolution may be interpreted as being only statements of intent, we apply rules of statutory construction.<sup>6</sup>

As the United States Supreme Court has noted,

[I]n interpreting a statute a court should always turn to one cardinal canon before all others. . . . [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.” *Connecticut Nat’l Bank v. Germain*, (1992) 112 S.Ct. 1146, 1149

“When the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’” *Id.*

If the words of the resolved clauses are clear and unambiguous we do not look to the subjective intent of the Commission to interpret the resolution.

The resolved clauses at issue are clauses 2, 3 and 4:

**2. RESOLVED**, that as of the date of this resolution, the Commission shall not approve leases for new power facilities that include once-through cooling technologies;

This is a simple, declarative sentence. The words and syntax do not lend themselves to multiple interpretations. The Commission says clearly that it shall not approve leases for new power facilities that include OTC technologies. No reasonable argument can be made for any other interpretation. According to Black’s Law Dictionary, Fifth Edition:

“ ‘shall’ . . . is generally imperative or mandatory. . . . In common or ordinary parlance, and in its ordinary signification, the term ‘shall’ is a word of command, and compulsory meaning; as denoting obligation. . . . It has the invariable significance of excluding the idea of discretion, and has the significance of operating to impose a duty which may be enforced, particularly if a public policy is in favor of this meaning, or when addressed to public officials, or where a public interest is involved. . . .”

Using the word “shall” in its normal and common usage the challenged provisions of the resolution impose a clear restriction on the Commission’s permissible actions. It is not possible to interpret the provision that the Commission “shall not approve leases for new power facilities that include once-through cooling technologies” as a statement that it would simply put “lessees of state coastal lands, and prospective lessees of state coastal lands, on notice of the Commission’s

concern for the adverse environmental impacts associated with the use of OTC. . . .” The words of the resolution are unambiguous. Therefore our inquiry is complete. Because the language of the resolution is unambiguous, we need not refer to the Commission’s intent to interpret it.

Resolved clause #3 states:

**3. RESOLVED**, that the Commission shall not approve new leases for power facilities, or leases for re-powering existing facilities, or extensions or amendments of existing leases for existing power facilities, whose operations include once-through cooling, unless the power plant is in full compliance, or engaged in an agency-directed process to achieve full compliance, with requirements imposed to implement both Clean Water Act Section 316(b) and California water quality law as determined by the appropriate agency, and with any additional requirements imposed by state and federal agencies for the purpose of minimizing the impacts of cooling systems on the environment, . . .

Again, this resolved clause is clear on its face. The Commission shall not approve new leases or leases for re-powering existing facilities or extension or amendments of existing leases unless specified criteria are met. The criteria are compliance with various state and federal requirements to minimize the impacts of cooling systems. There are no ambiguities in the language which would require OAL to turn to the intent of the Commission to clarify the meaning of the resolved clause.

The third challenged resolved clause is #4:

**4. RESOLVED**, that the Commission shall include in any extended lease that includes once-through cooling systems, a provision for noticing the intent of the Commission to consider re-opening the lease, if the appropriate agency has decided, in a permitting proceeding for the leased facility, that an alternative, environmentally superior technology exists that can be feasibly installed, and that allows for continued stability of the electricity grid system, or if state or federal law or regulations otherwise require modification of the existing once-through cooling system; . . .

This resolved clause also is, on its face, clear. The Commission shall require specified provisions in extended leases. There is no need or useful purpose to delve further to divine the Commission’s intent.

We must, therefore, accept the meaning of the unambiguous language of the resolution — that the Commission shall take the specified actions in the specified situations. The language employed in the resolution admits

<sup>6</sup> “Generally, the same rules of construction and interpretation which apply to statutes govern the construction and interpretation of rules and regulations of administrative agencies.” *California Drive-In Restaurant Association v. Clark* (1943) 22 Cal.2d 287, 292, 140 P.2d 657, 660.

no other interpretation and requires no resort to the intent of the drafters to be understood.

We next turn to the narrower legal question of whether the clauses constitute regulations under the APA. A regulation is defined in section 11342.600 as:

“... every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

In *Tidewater Marine Western Inc. v. Victoria Bradshaw*, (1996) 14 Cal.4th 557, 571, the California Supreme Court found that:

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code § 11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency's procedure (Gov. Code, § 11342 subd. (g).)

The first element of a regulation is whether the rule applies generally. The resolved clauses in question here apply to all holders of leases, both present and future. While this resolution may not apply to all stakeholders of the Commission, it applies to all members of a clearly identified class of persons.

The Commission's response to the petition points out that the number of leases for power plants is very limited. It says that there are only ten leases that are under the Commission's jurisdiction and are subject to leases issued by the Commission, not the group of 21 coastal power plants cited by the Petitioner. Of these ten leases, three are in “holdover” status and will continue operating until new leases are negotiated. The remaining seven each have several years remaining on their terms. The Commission argues that the resolution affects none of these leases because it will negotiate each lease on a case-by-case basis. The language used in the resolution contradicts the Commission's argument. The Commission has created a clearly identified class of at least ten leases to which the resolution applies. Furthermore, resolved clauses #2 and #3 apply to future new leases. Thus they would apply generally to an indeterminate number of future applicants, not just to the ten present lessees identified by the Commission.

The Commission argues that it will negotiate each lease on a case-by-case basis and that, if appropriate, it

might approve a lease that includes Once-Through Cooling. Such a lease, however, would explicitly violate the language of the resolution. The Commission cannot negotiate a lease that permits the use of Once-Through Cooling without violating the terms of the resolution. To argue otherwise is to argue, in effect, that the resolution does not exist. The mandatory and comprehensive language of the three challenged clauses does not admit an interpretation that leases will be evaluated on a case-by-case basis.

The first element required by *Tidewater* is therefore met. The language of the challenged clauses can only be interpreted as creating a rule that applies generally.

The second element is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency's procedure. The Commission has broad powers to manage and administer state property in the best interest of the state. The Commission is authorized by Public Resources Code sections 6201, 6216 and 6301, to administer, sell, lease and dispose of public lands owned by the state or under its control. As noted in the Commission's response to the petition:

In exercising this authority, the Commission is acting as the state's trustee and manager of state property. In considering any proposal for issuance of a lease, the Commission is making a decision, as any property owner would, as to whether the particular proposal is of benefit to the State. The Commission also includes in the terms and conditions of each lease provisions to protect the public health and safety. Each individual lease proposal must therefore be reviewed on its own merits. This is by necessity a case-by-case consideration of lease terms and conditions, and, ultimately entails a lease-by-lease approval by the Commission. (Commission's response, p. 3)

It is well within the Commission's statutory mandate to grant or refuse to grant a lease, or to require provisions to be included in a lease. Although the Commission makes many decisions on a case-by-case basis, not all provisions in the leases are individually negotiated. The Commission's own regulations include several contractual provisions that apply to all leases. For example, title 2, Cal. Code Regs., section 1911 sets out the interest and penalty payments criteria for leases. Section 2003 establishes rental rates for leases of surface lands and section 2004 establishes maximum terms for such leases.

A resolution by the Commission that it shall make standard decisions in the circumstances specified in the resolution clearly implements, interprets or makes specific the law enforced or administered by the Commission or governs the Commission's procedure. It does so

in the same manner as the Commission's existing regulations specifying that each lease shall include certain standardized provisions. The second element expressed in *Tidewater* is met.

Having determined that the challenged clauses comprise regulations under *Tidewater*, we must also consider whether they are legally exempt from adoption pursuant to the APA. Even though it was not adopted pursuant to the APA, a regulation does not meet the definition of "underground regulation" if it is "subject to an express statutory exemption from adoption pursuant to the APA" (title 1, Cal. Code Regs. 250(a).)

The provisions of the California Public Resources Code which govern the Commission do not contain any general provision allowing the Commission to adopt rules outside of the APA process. Therefore, any express statutory exemption from APA rulemaking requirements, if it existed, would have to be specific to the type of regulation contained in the challenged resolved clauses. No such statutory exemptions are apparent that might apply to clause #2 or clause #4. Both are unambiguous declarative sentences regarding policies to be followed by the Commission generally.

It might be argued clause #3 is the only legally tenable interpretation of the law and is, therefore, exempt from the APA adoption requirement pursuant section 11340.9(f). This section provides as follows:

11340.9 This chapter does not apply to . . .

(f) A regulation that embodies the only legally tenable interpretation of a provision of law.

On the surface, the third resolved clause appears merely to say that the Commission will only approve leases which comply with governing law — in other words, that it will not approve illegal leases. If this is what the clause provides, it could hardly be controversial. It would, presumably, be unlawful for the Commission knowingly to approve an illegal lease. If clause #3 was limited to providing that the Commission will not approve leases that violated the state and federal laws or statutes with which they are required to comply, it could be considered the "only legally tenable interpretation" of those laws and statutes to require compliance with those laws and statutes before a lease is granted or extended.

In this case, however, the resolved clause goes beyond requiring leases to comply with statutes and regulations. It mandates compliance with "any additional requirements imposed by state and federal agencies for the purpose of minimizing the impacts of cooling systems on the environment." This language would appear, for example, to mandate compliance with unenforceable underground regulations issued by another agency. It would include compliance with laws and regulations that may not clearly apply to once-through cooling sys-

tems but might be interpreted in that way by the Commission. The language is too broad and unclear to fall squarely into the "only legally tenable" exemption from the APA in Government Code section 11340.9. Language which leaves itself open to various interpretations cannot be the "only legally tenable" interpretation of a provision of law.

The Commission also argues that the resolution "cannot bind the current Commission or subsequent Commissioners in exercising their continuing authority and obligation in carrying out their responsibilities." (Commission's response, page 4.) This assertion may or may not be true, but it is irrelevant to the question of whether or not the Commission has issued an underground regulation. Under section 11340.5, a state agency enactment that creates a regulation, that has not been adopted pursuant to APA rulemaking and that is not subject to an express statutory exemption from APA rulemaking, is an underground regulation. The fact that the enactment may or may not be legally suspect otherwise is not relevant to analysis of compliance with section 11340.5.

Whether or not this resolution can legally bind subsequent actions by the Commission is a legal question beyond the scope of this determination. This question could only be resolved if, for example, the Commission approved a lease for a new power facility that included once-through cooling technologies and the approval was subsequently challenged because it violated the resolution. OAL cannot determine whether that challenge would succeed, but for our purposes the question is irrelevant. Section 11340.5 prohibits a state agency from issuing an underground regulation. In adopting this resolution the Commission has issued an underground regulation. The questions of whether or not the Commission has enforced it, and whether or not an attempted enforcement would be legally valid, are irrelevant to the question of whether or not it has been issued.

There is a strong policy reason for prohibiting the mere issuance of an underground regulation. The regulated public appearing before a state agency has the right to know what the rules are and to expect the agency to obey those rules. In this case, the issuance of this resolution has the effect of telling the regulated public that any application for a permit in violation of the provisions of the resolution will not be approved. The existence of this underground regulation as an apparent limitation upon allowable applications has regulatory impact without further enforcement action by the Commission. Whether such enforcement action, if it ever occurred, would be legally valid is unrelated to the regulatory impact that the resolution has by virtue simply of being issued.

The Commission further argues that a resolution need not be a regulation. OAL agrees that a resolution need



not always be a regulation. Indeed, the resolution that is the subject of this determination would not appear to be a regulation if clauses 2, 3 and 4 were not included. The nomenclature of the document in question is not relevant to the discussion of whether the document is or is not a regulation. This issue is not what the enactment is called; it is whether the enactment has regulatory effect. In this case, a leaseholder reading the resolution would believe that the Commission is binding itself to take the actions specified in the resolution. As noted in the Petitioner's rebuttal to the Commission's response:

In essence, the [Commission]'s response asserts that OAL and the regulated community should "pay no attention to that man behind the curtain", because the Resolution does not mean what it says, and that future Commissions are free to ignore the Resolution. This however, is obviously *not* what the Resolution states. Instead, the Resolution does the exact opposite. The [Commission] clearly intended to set forth a general standard as to how the [Commission] would treat lease applications for power plants that use OTC systems. (Petitioner's rebuttal to the Commission's response, page 4.)

Whether or not an action or enactment by a state agency constitutes an underground regulation is purely a legal issue. It does not depend upon whether the agency that issues the underground regulation actually attempts to enforce it, or whether such an attempt would ultimately be successful. It does not depend upon the form or name of the action or enactment. While these matters may or may not have practical significance for the regulated public, they have no relevance in the legal determination of whether or not an underground regulation exists.

### CONCLUSION

In view of its unambiguous language, OAL must conclude that the clauses two, three and four of the resolution constitute underground regulations. OAL notes that if the Commission meant only to express its concern about OTC systems, it could have used language that did not, on its face, create an explicit rule. By adopting a resolution that uses unambiguous language to establish an explicit rule, the Commission has issued an underground regulation in violation of section 11340.5.

/s/

William L. Gausewitz  
Director

/s/

Kathleen Eddy  
Senior Counsel

Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814  
(916) 323-6225

November 8, 2006

## SUMMARY OF REGULATORY ACTIONS

### REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

#### BOARD OF BARBERING AND COSMETOLOGY Board Approved Trainers and Establishments

This action amends the rule on prior approval of apprenticeships and the location where an apprentice may be trained so that an apprentice may secure approval to train at more than one location so long as all the locations are under common ownership, all the trainers are approved, and all of them agree to employ the apprentice.

Title 16  
California Code of Regulations  
AMEND: 919  
Filed 03/26/07  
Effective 04/25/07  
Agency Contact:  
Kristy Underwood (916) 324-8947

#### BOARD OF EQUALIZATION Cigarette & Tobacco Products Licensing

This action implements the Cigarette and Tobacco Products Licensing Act of 2003; Stats. 2003, Ch. 890 (A.B. 71).

Title 18  
California Code of Regulations  
ADOPT: 4500, 4501, 4502, 4503, 4504, 4505, 4506, 4507, 4508, 4509, 4600, 4601, 4602, 4603, 4604, 4605, 4606, 4607, 4608, 4609, 4700, 4701, 4702, 4703  
Filed 03/22/07  
Effective 04/21/07  
Agency Contact: Diane G. Olson (916) 322-9569



BOARD OF PHARMACY

Wholesaler Self-Assessment Form

New regulation section 1784 of Title 16 requires designated representatives in charge (“DRC”) of each pharmaceutical wholesaler to complete a self assessment of compliance with federal and state pharmacy laws. The assessment must be completed by July 1 of every odd numbered year. The assessment must also be completed if a new wholesaler permit is issued, the wholesaler changes the DRC or the wholesaler moves to a new location. The assessment form is incorporated by reference and must be kept on file for 3 years. The certification of completion is required to be under penalty of perjury.

Title 16  
California Code of Regulations  
ADOPT: 1784  
Filed 03/26/07  
Effective 04/25/07  
Agency Contact:  
Virginia Herold (916) 445-5014 x4005

CALIFORNIA ENERGY COMMISSION

Revisions to Siting Regulations

This action updates the requirements for applications to the Commission for power plant site certification and related procedures.

Title 20  
California Code of Regulations  
AMEND: 1002, 1201, 1207, 1208, 1209, 1209.5, 1216, 1217, 1702, 1708, 1709.7, 1710, 1716, 1717, 1720, 1720.3, 1720.4, 1721, 1744, 1747, 2012-App B, REPEAL: 1219, 1720.5, 1720.6  
Filed 03/28/07  
Effective 03/28/07  
Agency Contact: James Reede (916) 653-1245

DEPARTMENT OF CONSERVATION

Distributor Administrative Fee

This is the first emergency re-adoption of an emergency regulation approved December 5, 2006. The Department of Conservation allows distributors to retain an administrative fee that is a certain percentage of the California Redemption Value (CRV) they must pay on beverage containers they sell in California. The retained amount is to cover the cost of preparing documents required by the Department of Conservation. In a urgency bill effective September 30, 2006, the legislature changed the administrative fee from 1% to 1.5% of the total CRV. This emergency action changes the percentage in the regulations and requisite reporting form to conform to the statute.

Title 14

California Code of Regulations

AMEND: 2305, 2310, 2320

Filed 03/26/07

Effective 03/26/07

Agency Contact: Cheryl DuBose (916) 323-0728

DEPARTMENT OF FOOD AND AGRICULTURE

Oriental Fruit Fly Eradication Area

This Certificate of Compliance makes permanent the emergency language (OAL file no. 06-1107-O1E) adding Riverside County to the list of counties already proclaimed to be eradication areas with respect to the Oriental fruit fly, “*Bactrocera dorsalis*.”

Title 3

California Code of Regulations

AMEND: 3591.2(a)

Filed 03/28/07

Effective 03/28/07

Agency Contact: Stephen Brown (916) 654-1017

DEPARTMENT OF FOOD AND AGRICULTURE

Standardization—Peento Peach & Nectarine Size

This regulatory action is to add sizing nomenclature for Peento type nectarines and peaches. Peentos are smaller and of a different shape than typical nectarines and peaches. Consequently, they do not meet the current weight/count size requirements specified in the CCR. This action provides the appropriate size and weighting charts for these types of fruit.

Title 3

California Code of Regulations

ADOPT: 1446.9, 1454.16

Filed 03/27/07

Effective 04/26/07

Agency Contact: Susan Shelton (916) 445-2180

DEPARTMENT OF FOOD AND AGRICULTURE

Light Brown Apple Moth Eradication Area

This emergency regulatory action designates the entire counties of Alameda and Contra Costa as “eradication areas” with respect to the light brown apple moth (*Epiphyas postvittana*). This new regulatory section identifies the pest, its hosts, possible carriers of the pest (i.e. farm equipment and greenwaste), as well as the means and methods of eradication of the pest in these two counties.

Title 3

California Code of Regulations

ADOPT: 3591.20

Filed 03/21/07

Effective 03/21/07

Agency Contact: Stephen Brown (916) 654-1017

**DEPARTMENT OF INSURANCE**  
**Amendments to Fair Claims Regulations**

This is a nonsubstantive action updating an internal cross-reference citation to a CCR subsection. The subsection had been previously renumbered, and this action corrects a reference to the subsection.

Title 10  
California Code of Regulations  
AMEND: 2695.8(b)(2)  
Filed 03/23/07  
Effective 03/23/07  
Agency Contact:  
Risa Salat-Kolm (415) 538-4127

**DEPARTMENT OF MOTOR VEHICLES**  
**Disabled Person Placards and Plates**

DMV proposes adoption of three sections for application, issuance, and termination of disabled person license plates and parking placards. This action will add a new section series, starting with Section 182.00, to Title 13, Division 1, Chapter 1, Article 3.1 for Special Interest License Plates, and incorporates by reference form REG 195 (REV. 2/2007) and Sections (Parts) G and H of form REG 256 (REV. 9/2005).

Title 13  
California Code of Regulations  
ADOPT: 182.00, 182.01, 182.02, Form REG 195 (REV. 2/2007) AMEND: Form REG 256 (REV. 9/2005)  
Filed 03/26/07  
Effective 04/25/07  
Agency Contact: Randi Calkins (916) 657-8898

**FISH AND GAME COMMISSION**  
**Klamath River Sport Fishing**

Current regulations restrict the take of Chinook salmon on the Klamath River downstream of Iron Gate Dam to the Highway 96 Bridge at Weitchpec and on the Trinity River main stem from the mouth of the Trinity River South Fork downstream to the confluence with the Klamath River. Under those regulations, no salmon over 22 inches total length may be retained from April 1 through November 30, 2006. These protective measures have been in place each year since 2002, but will not be effective this year on April 1 due to the addition of the year for these two areas in the 2006 regulations. This emergency regulatory action will strike the year off the ending date of current regulations for these areas to continue the present protections until the 2007 Klamath Basin regulations are adopted and in place by July 2007.

Title 14  
California Code of Regulations  
AMEND: 7.50  
Filed 03/21/07  
Effective 03/21/07  
Agency Contact: Sherrie Koell (916) 653-4899

**OCCUPATIONAL SAFETY AND HEALTH**  
**STANDARDS BOARD**  
**Window Cleaning & Building Maintenance Operations**

This regulatory action amends General Industry Safety Orders dealing with (1) window cleaning: the use of roof tie-backs, and (2) powered platform installations permanently dedicated to interior or exterior building maintenance: the receipt of written assurances that new installations meet certain requirements, requirements for portable davits, requirements for certification records of each inspection and test, and requirements for periodic inspections and tests of building safety devices and equipment.

Title 8  
California Code of Regulations  
AMEND: 3291, 3292, 3295, 3296  
Filed 03/27/07  
Effective 04/26/07  
Agency Contact: Marley Hart (916) 274-5721

**OCEAN PROTECTION COUNCIL**  
**Conflict of Interest Code**

This is a Conflict of Interest Code filing that has been approved by the Fair Political Practices Commission and is being submitted for printing only and filing with the Secretary of State.

Title 2  
California Code of Regulations  
AMEND: 59560  
Filed 03/27/07  
Effective 04/26/07  
Agency Contact:  
Jonathon Gurish (510) 873-6431

**OFFICE OF THE STATE FIRE MARSHAL**  
**Automatic Extinguishing Systems**

This regulatory action is to amend one section in Title 19 to revise the format for self-adhesive tags for automatic fire extinguishing systems. It follows on the heels of a large rulemaking by OSFM in which they had provided a graphic of the tag. The tag can be hanging or adhesive. The previous rulemaking had mistakenly indicated that there were two sides to the tag and the user was required to provide information on both sides. The information on the "adhesive" side is being deleted since it is no longer necessary and would be unreadable once adhered to a surface.

Title 19  
California Code of Regulations  
AMEND: 906.2  
Filed 03/28/07  
Effective 04/01/07  
Agency Contact: Diane Arend (916) 324-9592

**SAN FRANCISCO BAY CONSERVATION AND  
DEVELOPMENT COMMISSION**  
San Francisco Bay Plan

In this regulatory action, the San Francisco Bay Conservation and Development Commission amends the San Francisco Bay Plan to relocate 15 acres of "port priority use area designation" for port-related trucking in the Port of Oakland, as adopted in Bay Plan Amendment No. 3-06. This regulatory action is subject to limited Administrative Procedure Act applicability and limited Office of Administrative Law review pursuant to Government Code section 11354.1.

Title 14  
California Code of Regulations  
AMEND: 11900  
Filed 03/27/07  
Effective 03/27/07  
Agency Contact: Sara Polgar (415) 352-3645

**SAN FRANCISCO BAY CONSERVATION AND  
DEVELOPMENT COMMISSION**  
San Francisco Bay Area Seaport Plan

In this regulatory action, the San Francisco Bay Conservation and Development Commission amends the San Francisco Bay Area Seaport Plan to relocate 15 acres of "port priority use area designation" for port-related trucking in the Port of Oakland, as adopted in Bay Plan Amendment No. 3-06. This regulatory action is subject to limited Administrative Procedure Act applicability and limited Office of Administrative Law review pursuant to Government Code section 11354.1.

Title 14  
California Code of Regulations  
AMEND: 11945  
Filed 03/27/07  
Effective 03/27/07  
Agency Contact: Sara Polgar (415) 352-3645

**SPEECH-LANGUAGE PATHOLOGY AND  
AUDIOLOGY BOARD**  
Continuing Professional Development Revisions

This rulemaking action would delineate continuing professional development course content provisions and limit hours that can be claimed for self-study, indirect client care issues, teaching courses, and taking courses concerning related areas. It establishes a pro-

cess whereby licensees and/or continuing professional development providers may petition the Board to review and approve a continuing professional development course and broadens the scope of acceptable continuing professional development course content.

Title 16  
California Code of Regulations  
AMEND: 1399.151.1, 1399.160.2, 1399.160.3, 1399.160.4, 1399.160.5, 1399.160.6, 1399.160.7, 1399.160.9, 1399.160.10  
Filed 03/23/07  
Effective 04/22/07  
Agency Contact: Kathi Burns (916) 263-2666

**STATE WATER RESOURCES CONTROL BOARD**  
Amendment to San Diego Basin Plan

This regulatory action is an amendment to the Water Quality Control Plan for the San Diego Basin incorporating authorization for compliance time schedules in Waste Discharge Requirements that implement National Pollutant Discharge Elimination System regulations and federal Clean Water Act requirements.

Title 23  
California Code of Regulations  
ADOPT: 3989.6  
Filed 03/23/07  
Agency Contact: Nirmal Sandhar (916) 341-5571

**CCR CHANGES FILED  
WITH THE SECRETARY OF STATE  
WITHIN OCTOBER 25, 2006 TO  
MARCH 28, 2007**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

**Title 2**

03/27/07 AMEND: 59560  
03/20/07 ADOPT: 18746.3  
03/15/07 AMEND: div. 8, ch. 102, section 59100  
03/14/07 AMEND: div. 8, ch. 73, section 56200  
03/01/07 AMEND: 21922  
02/28/07 AMEND: 714  
02/16/07 AMEND: 1859.2, 1859.76, 1859.83, 1859.163.1, 1859.167, 1859.202, 1866  
02/02/07 AMEND: 2561, 2563, 2564, 2565, 2566, 2567  
01/26/07 ADOPT: 599.550, 599.552, 599.553, 599.554 AMEND: 599.500

01/19/07 ADOPT: 18531.62, 18531.63, 18531.64  
AMEND: 18544  
01/11/07 AMEND: 1894.4, 1896.12  
01/09/07 AMEND: 18707.1  
01/09/07 ADOPT: 18530.3  
01/09/07 ADOPT: 18534  
01/08/07 ADOPT: 1859.106.1 AMEND: 1859.106  
12/22/06 AMEND: 21906  
12/18/06 AMEND: 18312, 18316.5, 18326,  
18401, 18521, 18537.1, 18704.5,  
18705.5, 18730, 18746.2  
12/18/06 AMEND: 18703.4, 18730, 18940.2,  
18942.1, 18943  
12/18/06 AMEND: 1859.2, 1859.70.1, 1859.71.3,  
1859.78.5  
12/18/06 AMEND: 18545  
12/18/06 ADOPT: 18421.3  
12/14/06 ADOPT: 18707.10  
12/13/06 ADOPT: 20108, 20108.1, 20108.12,  
20108.15, 20108.18, 20108.20,  
20108.25, 20108.30, 20108.35,  
20108.36, 20108.37, 20108.38,  
20108.40, 20108.45, 20108.50,  
20108.51, 20108.55, 20108.60,  
20108.65, 20108.70, 20108.75, 20108.80  
11/06/06 AMEND: 18216, 18421.1  
11/03/06 AMEND: 1859.73.2  
10/31/06 AMEND: 559.500, 559.501, 559.503,  
559.504, 559.505, 559.507, 559.508,  
559.509, 559.510, 559.511, 559.512,  
559.513, 559.515, 559.516, 559.517

### **Title 3**

03/28/07 AMEND: 3591.2(a)  
03/27/07 ADOPT: 1446.9, 1454.16  
03/21/07 ADOPT: 3591.20  
03/15/07 ADOPT: 1371, 1371.1, 1371.2  
03/07/07 AMEND: 3423(b)  
03/06/07 AMEND: 3700(c)  
02/15/07 ADOPT: 499.5, 513, 513.5 AMEND:  
498, 499, 500, 501, 502, 504, 505, 509,  
510, 511, 512, 512.1, 512.2, 514, 515,  
516, 517, 525, 551, 552, 553, 554, 604.1  
REPEAL: 499.5, 503, 506, 508, 512.3,  
527, 536, 537, 538, 539, 540, 541, 543,  
544, 546, 547, 550  
02/14/07 AMEND: 3700(c)  
02/08/07 AMEND: 6170, 6172, 6200  
02/08/07 AMEND: 3433(b)  
02/07/07 AMEND: 6170, 6172, 6200  
01/31/07 AMEND: 3591.12(a)  
01/24/07 AMEND: 3591.13(a)

01/18/07 AMEND: 3433(b)  
01/18/07 AMEND: 3800.1, 3800.2  
01/18/07 AMEND: 3423(b)  
01/18/07 AMEND: 3433(b)  
01/09/07 AMEND: 3433(b)  
01/08/07 AMEND: 3591.2(a)  
01/08/07 AMEND: 3591.6(a)  
01/05/07 AMEND: 3406(b)  
01/05/07 AMEND: 3433(b)  
01/05/07 AMEND: 6625  
01/03/07 AMEND: 3424(b)  
12/20/06 AMEND: 3433(b)  
12/20/06 AMEND: 3423(b)  
12/19/06 ADOPT: 6310, 6312, 6314 AMEND:  
6170  
12/06/06 AMEND: 3591.6  
12/06/06 AMEND: 3700(c)  
11/30/06 ADOPT: 6128 AMEND: 6130  
11/16/06 AMEND: 3433(b)  
11/13/06 AMEND: 3423(b)  
11/08/06 AMEND: 3591.2(a)  
10/27/06 ADOPT: 765 AMEND: 760.4, Article  
3.5

### **Title 4**

03/13/07 ADOPT: 7075, 7076, 7077, 7078, 7079,  
7080, 7081.7082, 7083, 7084, 7085,  
7086, 7087, 7088, 7089, 7090, 7091,  
7092, 7093, 7094, 7095, 7096, 7097,  
7098, 7099 REPEAL: 7000, 7001, 7002,  
7003, 7004, 7005, 7006, 7007, 7008,  
7009, 7010, 7011, 7012, 7013, 7014,  
7015, 7016, 7017  
02/08/07 ADOPT: 12550, 12552, 12554, 12556,  
12558, 12560, 12562, 12564, 12566,  
12568, 12572  
02/08/07 ADOPT: 12341  
01/31/07 AMEND: 12590  
01/30/07 AMEND: 12358  
01/30/07 ADOPT: 12460, 12461, 12462, 12463,  
12464, 12466  
01/30/07 AMEND: 12101, 12301.1, 12309  
01/26/07 AMEND: 1433  
01/17/07 ADOPT: 523  
01/11/07 AMEND: 1536  
12/05/06 AMEND: 1582  
11/22/06 AMEND: 1544 & 1658  
11/16/06 ADOPT: 2422.1  
11/03/06 AMEND: 10152, 10153, 10155, 10159,  
10160, 10161, 10162

### **Title 5**

03/19/07 AMEND: 41550  
03/19/07 AMEND: 41301



03/01/07	AMEND: 19816, 19851, 19852, 19853	3415, 3500, 3505, 3510, 3520, 3530,
02/28/07	AMEND: 80028, 80487	3530.10, 3530.20, 3530.30, 3530.40,
02/16/07	ADOPT: 11987, 11987.1, 11987.2, 11987.3, 11987.4, 11987.5, 11987.6, 11987.7	3540, 3610, 3615, 3620, 3620.05, 3620.10, 3630, 3640, 3650 REPEAL: 3100 3200.010, 3200.020, 3200.030, 3200.040 3200.050, 3200.060, 3200.070, 3200.080, 3200.090, 3200.100, 3200.110, 3200.120, 3200.130, 3200.140, 3200.150, 3200.160, 3310, 3400, 3405, 3410, 3415
02/08/07	ADOPT: 1000, 1000.1, 1000.2, 1000.3, 1000.4, 1000.5, 1000.6, 1000.7	11/21/06 AMEND: 9100
01/17/07	ADOPT: 55151, 55151.5 AMEND: 55002, 55150, 58160	<b>Title 10</b>
01/17/07	ADOPT: 58707 AMEND: 58704, 58770, 58771, 58773, 58774, 58776, 58777, 58779 REPEAL: 58706, 58775	03/23/07 AMEND: 2695.8(b)(2)
01/10/07	AMEND: 55806	03/09/07 AMEND: 2498.6
11/13/06	AMEND: 18013, 18054	03/06/07 AMEND: 260.230, 260.231, 260.236.1, 260.241.4, 260.242 REPEAL: 260.231.2, 260.236.2
11/08/06	AMEND: 850, 851, 852, 853, 854, 855, 857, 858, 859, 861, 862, 863, 864, 864.5, 865, 866, 867, 870 REPEAL: 850.5, 880, 881, 882, 883, 884, 886, 887, 888, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 901	01/23/07 ADOPT: 2183, 2183.1, 2183.2, 2183.3, 2183.4 REPEAL: 2691.18, 2691.19
10/26/06	AMEND: 30023(c)	01/10/07 AMEND: 3528
<b>Title 8</b>		01/08/07 AMEND: 2698.52(c), 2698.53(b), 2698.56(c)
03/27/07	AMEND: 3291, 3292, 3295, 3296	01/03/07 ADOPT: 2642.4, 2643.8, 2644.24, 2644.25, 2644.26, 2644.27, 2644.50, AMEND: 2642.5, 2642.6, 2642.7, 2643.6, 2644.2, 2644.3, 2644.4, 2644.5, 2644.6, 2644.7, 2644.8, 2644.10, 2644.12, 2644.15, 2644.16, 2644.17, 2644.18, 2644.19, 2644.20, 2644.21, 2644.23, 2646.3, 2646.4, 2648.4 REPEAL: 2642.4, 2643.2, 2644.9, 2644.11
03/06/07	AMEND: 1529, 1532, 1532.1, 1535, 5144, 5190, 5198, 5200, 5202, 5207, 5208, 5210, 5211, 5213, 5214, 5217, 5218, 5220, 8358	12/29/06 AMEND: 2696.1, 2696.2, 2696.3, 2696.5, 2696.6, 2696.7, 2696.9, 2696.10 REPEAL: 2696.4, 2696.8
03/02/07	ADOPT: 1731 AMEND: 1730	12/29/06 AMEND: 2052.1, 2052.4
03/01/07	AMEND: 1541	12/29/06 AMEND: 2632.5(c)
02/28/07	AMEND: 9789.40	12/29/06 AMEND: 2222.10, 2222.11, 2222.12, 2222.14, 2222.15, 2222.16, 2222.17, 2222.19 REPEAL: 2222.13
02/21/07	AMEND: 9780, 9783	12/29/06 AMEND: 2651.1, 2661.1, 2661.3, 2662.1, 2662.3, 2662.5
02/15/07	AMEND: 9789.11	12/29/06 ADOPT: 5327, 5357.1, 5358, 5358.1 AMEND: 5350, 5352
12/29/06	AMEND: 1598, 1599	12/27/06 AMEND: 2498.6
12/27/06	AMEND: 3385	12/26/06 ADOPT: 2698.80, 2698.81, 2698.82, 2698.83, 2698.84, 2698.85, 2698.86, 2698.87, 2698.88, 2698.89, 2698.89.1 AMEND: 2698.80, 2698.81, 2698.82, 2698.83, 2698.84, 2698.85, 2698.86
12/21/06	AMEND: 5031	12/22/06 ADOPT: 2548.1, 2548.2, 2548.3, 2548.4, 2548.5, 2548.6, 2548.7, 2548.8
12/15/06	AMEND: 5006.1	
11/14/06	AMEND: 3482, 5161, 5178	
11/14/06	AMEND: 6368	
11/08/06	AMEND: 17000 Appendix	
11/02/06	AMEND: 3650	
<b>Title 9</b>		
12/29/06	ADOPT: 3100 3200.010, 3200.020, 3200.030, 3200.040 3200.050, 3200.060, 3200.070, 3200.080, 3200.090, 3200.100, 3200.110, 3200.120, 3200.130, 3200.140, 3200.150, 3200.160, 3200.170, 3200.180, 3200.190, 3200.210, 3200.220, 3200.230, 3200.240, 3200.250, 3200.260, 3200.270, 3200.280, 3200.300, 3200.310, 3300, 3310, 3315, 3320, 3350, 3360, 3400, 3405, 3410,	

12/20/06 ADOPT: 2614, 2614.1, 2614.2, 2614.3,  
2614.4, 2614.5, 2614.6, 2614.7, 2614.8,  
2614.9, 2614.10, 2614.11, 2614.12,  
2614.13, 2614.14, 2614.15, 2614.16,  
2614.17, 2614.18, 2614.19, 2614.20,  
2614.21, 2614.22, 2614.23, 2614.24,  
2614.25, 2614.26, 2614.27  
12/19/06 AMEND: 2690.90, 2690.91, 2690.92,  
2690.93, 2690.94  
12/13/06 ADOPT: 2534.40, 2534.41, 2534.42,  
2534.43, 2534.44, 2534.45, 2534.46  
11/15/06 AMEND: 2697.6, 2697.61  
11/09/06 AMEND: 2498.5  
11/09/06 AMEND: 2534.27, 2534.28

**Title 11**

03/06/07 AMEND: 1070, 1082  
02/02/07 ADOPT: 9070, 9071, 9072, 9073, 9076,  
9077, 9078 AMEND: 1005, 1018, 1055,  
REPEAL: 1011  
02/02/07 ADOPT: 999.40  
01/30/07 AMEND: 20  
01/25/07 AMEND: 30.1  
01/25/07 AMEND: 30.5  
01/19/07 AMEND: 1005, 1007, 1080  
12/21/06 ADOPT: 80.3  
12/21/06 AMEND: 1070, 1081, 1082  
12/21/06 AMEND: 48.6

**Title 13**

03/26/07 ADOPT: 182.00, 182.01, 182.02, Form  
G 105 (REV. 2/2007) AMEND: REG 256  
(REV. 9/2005)  
02/09/07 AMEND: 2702, 2703, 2704, 2706, 2707,  
2709  
01/18/07 AMEND: 1961, 1976, 1978  
01/16/07 ADOPT: 2189 AMEND: 2180, 2180.1,  
2181, 2182, 2183, 2185, 2186, 2187,  
2188  
12/27/06 ADOPT: 1300 REPEAL: 1300, 1301,  
1302, 1303, 1304, 1304.1, 1305, 1310,  
1311, 1312, 1313, 1314, 1315, 1320,  
1321, 1322, 1323, 1324, 1325, 1330,  
1331, 1332, 1333, 1334, 1335, 1336,  
1337, 1338, 1339, 1339.1, 1339.2,  
1339.3, 1339.4, 1339.5, 1339.6, 1340,  
1341, 1342, 1343, 1344, 1350, 1351,  
1352, 1353, 1354, 1355, 1356, 1360,  
1361, 1362, 1363, 1364, 1365, 1366,  
1370, 1371, 1372, 1373, 1374, 1375,  
1400, 1401, 1402, 1403, 1404, 1405,  
1406, 1410, 1411, 1412, 1413, 1414,  
1415, 1416, 1417, 1418, 1420, 1421,  
1422, 1423, 1424, 1425

12/13/06 AMEND: 553.70  
12/06/06 ADOPT: 2022, 2022.1  
12/01/06 ADOPT: 2479  
11/13/06 AMEND: 2445.2(a)  
11/13/06 AMEND: 2111, 2112, 2441, 2442,  
2444.2, 2445.1, 2445.2, 2446  
10/30/06 ADOPT: 118.00  
10/27/06 AMEND: 423.00

**Title 13, 17**

12/27/06 ADOPT: 93116.3.1 AMEND: 2452,  
2456, 2461, 93115, 93116.2, 93116.3  
12/06/06 ADOPT: 2299.1, 93118

**Title 14**

03/27/07 AMEND: 11945  
03/26/07 AMEND: 11900  
03/26/07 AMEND: 2305, 2310, 2320  
03/21/07 AMEND: 7.50  
03/20/07 AMEND: 790, 815.01, 815.02, 815.03,  
815.04, 815.05, 815.06, 815.07, 815.08,  
815.09, 816.01, 816.02, 816.03, 816.04,  
816.05, 816.06, 817.02, 817.03, 818.01,  
818.02, 818.03, 819.01, 819.02, 819.03,  
819.04, 819.06, 819.07, 820.01, 825.03,  
825.05, 825.07, 826.01, 826.02, 826.03,  
826.04, 826.05, 826.06, 827.01, 827.02  
03/20/07 AMEND: 11945  
03/01/07 AMEND: 10121, 11900(a)(5)  
02/28/07 ADOPT: 5.81, 27.91 AMEND: 1.62,  
1.63, 1.67, 2.00, 5.00, 5.80, 7.00, 7.50,  
8.00, 27.60, 27.65, 27.90, 27.95, 28.20,  
29.70, 29.80, 29.85, 195, 701  
02/23/07 AMEND: 671.5  
02/16/07 AMEND: 10214, 10381, 10500, 10620,  
11002, 11003, 11005  
02/13/07 AMEND: 53.03, 149, 149.1  
02/08/07 AMEND: 880  
02/05/07 ADOPT: 2990, 2995, 2997 AMEND:  
2125, 2518  
01/18/07 ADOPT: 27.20, 27.25, 27.30, 27.35,  
27.40, 27.45, 27.50, 28.48, 28.49, 28.51,  
28.52, 28.53, 28.57 AMEND: 1.91,  
27.60, 27.65, 27.83 (amend and  
renumber to 27.51), 28.26, 28.27, 28.28,  
28.29, 28.54, 28.55, 28.56, 28.58, 28.90,  
701 REPEAL: 27.67, 27.82  
12/28/06 ADOPT: 25231  
12/26/06 AMEND: 1690, 1691, 1692, 1693, 1694,  
1695, 1696, 1697, 1698, 1712, 1714,  
1720, 1721, 1721.2, 1721.3, 1721.3.1,  
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